

Your Land is My Land: Why Utah’s Public Land Belongs to the United States

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ABSTRACT

Do public lands belong to the federal government or the individual states the lands are within? *Utah v. United States*, a case filed in the Supreme Court in August 2020, sought to answer this question as old as the United States itself. Currently, the Bureau of Land Management retains almost 70% of the land within the state of Utah. Utah, along with the 13 states that filed *amicus curiae* in support, sought to see public lands within a state be divested to them. While the Supreme Court denied hearing the issue, unrest in states will continue until there is a final resolution on public land ownership.

This Comment examines the arguments of the parties in *Utah v. United States*. Specifically, this Comment explores the tension between the federal and state governments over public land control. Drawing from court decisions regarding Congress’s authority to dispose and divest property, the Founding-Era history of divestiture, and the public interest in Western conservation efforts, this Comment argues that the federal government can hold unappropriated public lands within a state indefinitely.

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I. INTRODUCTION

On September 1, 1945, Woody Guthrie released the song, “This Land is Your Land.”¹ The American Folk song, now a classic, expresses Guthrie’s sentiment that the United States belongs to everyone, not just the government.² Yet, on August 20, 2024, Utah filed a landmark public lands lawsuit to answer the question: Does the land belong to the federal government or the individual states?³

The issue presented to the Supreme Court was whether the federal government can control unappropriated lands within a state indefinitely.⁴ Currently, the Bureau of Land Management (“BLM”) controls approximately 70% of the land in Utah, 34% of which (18.5 million acres) is unappropriated public lands.⁵ However, the BLM proposed the Public Lands Rule to impose stricter regulations on the access to, recreation in, and infrastructure necessary for locations such as the Grand Staircase-Escalante National Monument.⁶ To date, Utah is the only state to pursue legal action against the federal government for control of unappropriated public lands.⁷ However, many other states have questioned the BLM’s indefinite control for decades.⁸ The Supreme Court denied Utah’s request for leave that the federal government must relinquish its control of unappropriated public lands in Utah on January 13, 2025, creating even more uncertainty in ultimately finding a resolution.⁹

This Comment will analyze why the Supreme Court should have granted leave on the matter and ruled in favor of the United States holding federal lands within a state. Part II will provide background on the history of the federal government’s management of unappropriated public lands.¹⁰ This Part will create a timeline starting from the acquisition of Utah in the Treaty of Guadalupe Hidalgo to the present day.¹¹ This Part will also

1. See Woody Guthrie writes “This Land Is Your Land”, HIST. (Feb. 22, 2024), <https://perma.cc/9JPU-SW7R>.

2. See *id.*

3. See Bill of Complaint, Utah v. United States, 145 S. Ct. 1134 (2025) (No. 220160), 2025 WL 76428.

4. See *id.*

5. See *Stand for our Land – Let Utah Manage Utah Land*, UTAH: STAND FOR OUR LAND, <https://perma.cc/7M8A-V7YP> (last visited Sep. 20, 2024, at 11:56 ET).

6. See *Public Lands Rule*, UTAH PUBLIC LANDS, <https://perma.cc/6SVN-WG6K> (last visited Sep. 20, 2024, at 11:58 ET).

7. See STAND FOR OUR LAND UTAH, *supra* note 5.

8. See *id.*

9. See Utah v. United States, 145 S. Ct. 1134, 1 (2025) (mem.).

10. See *infra* Part II.

11. See Maren Peterson, *Utah’s Road to Statehood: 125 Years*, UTAH ARCHIVES AND REC. SERV. (Jan. 4, 2021), <https://perma.cc/BUK8-LWPF>.

address important landmark developments such as Utah's incorporation into the United States,¹² the Enclave Clause,¹³ the establishment of the BLM,¹⁴ the Sagebrush Rebellion,¹⁵ and the County Supremacy Movement.¹⁶ Finally, this Part will discuss the arguments set forth by Utah and the United States in favor of their respective positions.¹⁷

Part III will explain why the Supreme Court should have granted Utah's leave.¹⁸ This Part will then detail why the federal government is within its power to hold public lands indefinitely within a state.¹⁹ Ultimately, this Comment argues that the Supreme Court should rule in favor of the federal government to secure the people and nation's interests in public lands on the merits.

II. BACKGROUND

Public lands have been a part of our nation since its establishment.²⁰ However, not all of the public lands in the United States are contested.²¹ Various movements and state legislatures have attempted to assert claims to public lands over the federal government.²² To understand the tension between state sovereignty and federal land ownership, a foundational knowledge about the history of federal land management is warranted.

A. *What are Unappropriated Public Lands?*

The discussion and controversy around ownership of unappropriated public lands is not a recent issue.²³ To better understand the controversy, it is important to understand which lands are deemed unappropriated public lands. Further, federal ownership of such lands has disproportionately impacted the Western United States.

12. See Enabling Act for State of Utah, ch. 138, 28 Stat. 107 (1894), <https://perma.cc/3VXF-ZWTR>.

13. See U.S. CONST. art. IV, § 3, cl. 2.

14. See *History of the BLM*, BLM, <https://perma.cc/S3AP-PPZU> (last visited Oct. 20, 2024, at 13:03 ET).

15. See Spencer Driscoll, *Utah's Enabling Act and Congress's Enclave Clause Authority: Federalism Implications of a Renewed State Sovereignty Movement*, 2012 B.Y.U.L. REV. 999, 1003 (2012).

16. See *id.*

17. See *infra* Section II.E.

18. See *infra* Section II.A.

19. See *infra* Section II.B.

20. See Carol Hardy Vincent, CONG. RSCH. SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1 (2020).

21. See Bill of Complaint, *supra* note 3, at 4.

22. See *infra* Section II.B.4.

23. See Vincent, *supra* note 20.

1. Definition of Unappropriated Public Lands

According to 43 U.S.C. § 852(d)(1), the term unappropriated public lands include:

lands withdrawn for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulfur, but otherwise subject to appropriation, location, selection, entry, or purchase under the nonmineral laws of the United States; lands withdrawn by Executive Order Numbered 5327, of April 15, 1930, if otherwise available for selection; and the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.²⁴

The federal government owns approximately 640 million acres of public land throughout the United States.²⁵ This land is split up and managed by five federal agencies.²⁶ Each agency's administration of land and style of land management is derived from their distinct responsibilities.²⁷ For example, the BLM controls 244.4 million acres of land under their multiple-use approach.²⁸ The Fish and Wildlife Service ("FWS"), in contrast, controls 89.2 million acres for the conservation and protection of flora and fauna.²⁹ The remaining portion of federal land is administered and managed by various other agencies, including the U.S. Army Corps of Engineers and the Bureau of Reclamation.³⁰

2. Federal Public Land Ownership in Western States

Of the BLM's administered land, 99% is concentrated in the 11 western states and Alaska.³¹ Among the 11 coterminous western states, the federal government owns, on average, approximately 45.9% of the land

24. 43 U.S.C. § 852(d)(1).

25. *See* Vincent, *supra* note 20.

26. *See id.* The five agencies are the BLM, Fish and Wildlife Service ("FWS"), National Parks Service ("NPS"), Forest Service ("FS"), and the Department of Defense ("DOD"). *Id.* The DOD is the fifth-largest land management agency in the federal government, controlling 1% of all federal land. *Id.* Unlike its four counterparts that are focused on conservation and natural resources, the DOD designates these lands for the installation and operation of national security sites (i.e. military bases and training ranges). *Id.*

27. *See id.*

28. *See id.*; *see also* 43 U.S.C. § 1702(c) ("The term 'multiple use' means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people[.]").

29. *See* Vincent, *supra* note 20.

30. *See id.*

31. *See id.* at 4. The 11 western states are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. *Id.*

within the state.³² The federal government owns the most land in Nevada, where the BLM controls approximately 80.1%.³³ In contrast, the federal government owns an average of approximately 4.1% of eastern states' land.³⁴ Iowa and Connecticut share the lowest percentage of federally-owned land at roughly 0.3% of each states' land.³⁵

From 1990 to 2018, the overall percentage of federal lands has gradually declined.³⁶ The decline of federal ownership was primarily due to the BLM transferring Alaskan public land to the State of Alaska, Alaskan Natives, and Alaskan Native Corporations.³⁷ The 11 western states also saw a decrease in federal land ownership by 10.7 million acres, or 3.0%.³⁸ Despite the general decrease in federal ownership, Utah has only experienced a 0.9% reduction of federal land ownership within the past 30 years.³⁹

B. History of the Bureau of Land Management

The estranged relationship between the State of Utah and the BLM is not a new development.⁴⁰ The BLM has controlled the public lands of western states through various agencies since 1812.⁴¹ The federal government's control of Utah's public lands is older than the State of Utah itself.⁴²

1. The Founding and Incorporation of the State of Utah

Until the mid-nineteenth century, most of the land west of the Mississippi River remained unsettled.⁴³ In 1847, the first Mormon pioneers arrived in Salt Lake Valley.⁴⁴ At the time, Mexico still occupied the lands now considered modern-day Utah.⁴⁵ These lands changed ownership at the end of the Mexican-American War.⁴⁶ On February 2, 1848, Mexico and the United States signed the Treaty of Guadalupe Hidalgo ("the Treaty"), officially ending the war between the United

32. *See id.* at 19.

33. *See* Vincent, *supra* note 20, at 7.

34. *See id.* at 19.

35. *See id.*

36. *See id.* at 14.

37. *See id.*

38. *See* Vincent, *supra* note 20, at 15.

39. *See id.* at 17.

40. *See BLM Utah History*, BLM, <https://perma.cc/W7EP-H9AK> (last visited Oct. 20, 2024, at 12:43 ET).

41. *See id.*

42. *See id.*

43. *See id.*

44. *See id.*

45. *See* BLM, *supra* note 40.

46. *See id.*

States and Mexico.⁴⁷ In the Treaty, Mexico ceded 55% of its territory to the United States, extending the United States' territory to the Pacific Ocean.⁴⁸ This mass annexation of territory included many modern-day states like California, Nevada, Utah, New Mexico, most of Arizona and Colorado, and parts of other states.⁴⁹

Despite the federal government annexing the modern-day lands of Utah, Utah's admission to the Union was not immediate.⁵⁰ Utah's first attempt at achieving statehood was rejected in 1849.⁵¹ The government denied the application because the proposed state was too large and did not meet the population requirements for Union incorporation.⁵² Instead, the lands became the Utah Territory in 1850.⁵³

In truth, historians theorize that Congress hesitated to admit Utah into the Union because of the Mormon Church's influence and the practice of polygamy in the area.⁵⁴ The hesitancy of Congress was subdued when the Latter-Day Saints Church President, Wilford Woodruff, issued an official manifesto declaring the end of practicing polygamy in 1890.⁵⁵ Finally, Congress permitted the Utah Territory to call a Constitutional Convention in 1895.⁵⁶ Soon after, the Constitutional Convention drafted the official constitution for the new State of Utah.⁵⁷

As part of the 1895 Constitutional Convention, Congress enacted the Utah Enabling Act ("the Act").⁵⁸ The Act authorized Utah's formation as a state and set forth the conditions of its admission into the Union.⁵⁹ Section 3 of the Act provided how the federal government would proceed to dispose of the unappropriated public lands in the territory:

47. See Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848), <https://perma.cc/4JM8-2T95>.

48. See *id.*

49. See *id.*

50. See Maren Peterson, *Utah's Road to Statehood: 125 Years*, UTAH ARCHIVES AND RECS. SERV. (Jan. 4, 2021), <https://perma.cc/BUK8-LWPF>.

51. See *id.*

52. See *id.*; see also R. Sam Garrett, CONG. RSCH. SERV., IF11792, STATEHOOD PROCESS AND POLITICAL STATUS OF U.S. TERRITORIES: BRIEF POLICY BACKGROUND 2 (2021).

53. See *id.*

54. See *id.*; see also Maren Peterson, *Utah's Road to Statehood: The Obstacle of Polygamy*, UTAH ARCHIVES AND RECS. SERV. (May 27, 2021), <https://perma.cc/5EYT-42QX> ("As a territory, the governor and judges were all federally appointed. But if they were a state, the population could elect their own governor and judges who would be sympathetic to the cause of polygamy and wouldn't prosecute it to the fullest extent.").

55. *Id.*

56. *Id.*

57. *Id.*

58. See Enabling Act for State of Utah, 28 Stat. 107 (1894), <https://perma.cc/3VXF-ZWTR>.

59. *Id.*

The people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof . . . and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States⁶⁰

Presently, the BLM governs Utah's unappropriated lands and undertakes a comprehensive resource management process that involves implementing resource inventory, public participation, and consistency with state and local land use plans and regulations.⁶¹ Public lands' designations and restrictions are dependent on a balancing test between preservation efforts and natural resource management.⁶²

For example, BLM provisions for the right of way⁶³ have been invoked to develop the western power grid through wind and solar energy projects.⁶⁴ Other designations, however, restrict the land to only preservation efforts. In 1996, the Clinton administration put the BLM in charge of its first national monument: the 1.7-million-acre Grand Staircase-Escalante National Monument in southern Utah.⁶⁵ National monument designations were used to restrict these lands from energy leasing, mining, fracking, and other resource extraction methods.⁶⁶

2. Creation of the Bureau of Land Management

The western expansion of the United States in the nineteenth century created new land management issues.⁶⁷ Congress was met with the challenges of western migration and homesteading.⁶⁸ In response, Congress established the General Land Office ("GLO") in 1812 to oversee the disposal of federal lands.⁶⁹ The GLO was the original organization for all public land sales, patents, entries, and other historical land documents.⁷⁰

60. *Id.*

61. See Robert B. Keiter, 1-1 ROCKY MT. MIN. L. FDN. (2017), <https://perma.cc/SHN9-YNTV>.

62. *Id.*

63. Right of way provisions authorize specific parcels of public lands to be used for projects such as laying fiber optics or constructing roads. See *Rights-of-Way*, BLM, <https://perma.cc/V9AK-LLFT> (last visited Jan. 13, 2026, at 9:25 ET).

64. *Id.*

65. *Id.*

66. *Id.*

67. BLM, *supra* note 40.

68. *Id.*

69. Vincent, *supra* note 20, at 4.

70. *National Timeline*, BLM, <https://perma.cc/MM7C-UEW6> (last visited Nov. 10, 2024, at 21:37 ET); see also *General Land Office Records*, BLM, <https://perma.cc/Z4UN-DY9H> (last visited Nov. 10, 2024, at 21:39 ET).

The GLO is credited for documenting the initial transfer of public lands from the federal government to individuals, businesses, and other entities.⁷¹ In 1934, under the Taylor Grazing Act,⁷² the Department of the Interior established the U.S. Grazing Service to manage grazing on public rangelands.⁷³ The U.S. Grazing Service zoned grazing districts, regulated grazing, and implemented various public rangeland improvements across the western states.⁷⁴

After more than a century of western expansion and settlement, the attitudes and values of land conservation changed.⁷⁵ In 1946, President Truman merged the GLO and the U.S. Grazing Service into one organization—the BLM.⁷⁶ Under the direction of the Secretary of the Interior, the BLM became responsible for all executive duties regarding surveying and selling public lands belonging to the United States.⁷⁷

3. The Classification and Multiple Land Use Act of 1964

The 1960s brought rapid growth and change to the BLM.⁷⁸ President Kennedy stated that public lands were vital to the nation's economic health.⁷⁹ These same lands, however, were plagued by “uncontrollable use and a lack of proper management.”⁸⁰ In response, the BLM was instructed to focus on acquiring more land and developing systems for resource conflict resolution.⁸¹ The expansion and development of the BLM and its obligations in this time spurred the label of “multiple-use” to describe the agency's management approach.⁸²

The BLM's multiple-use approach was officially endorsed and codified in the Classification and Multiple Use Act (“CMU Act”) of 1964.⁸³ “Multiple-use” is defined as the “combination of surface and subsurface resources of the public lands that will best meet the present and

71. See *Accessing Land Entry Records*, NAT'L ARCHIVES, <https://perma.cc/Z6CR-NM95> (last visited Nov. 10, 2024, at 21:43 ET).

72. See 43 U.S.C. §§ 315–316.

73. See *Accessing Land Entry Records*, NAT'L ARCHIVES, <https://perma.cc/Z6CR-NM95> (last visited Nov. 10, 2024, at 21:43 ET).

74. *National Timeline*, BLM, <https://perma.cc/MM7C-UEW6> (last visited Nov. 10, 2024, at 21:37 ET).

75. *History of the BLM*, BLM, <https://perma.cc/S3AP-PPZU> (last visited Oct. 20, 2024, at 13:03 ET).

76. *Id.*

77. 43 U.S.C. § 2.

78. See *Opportunity and Challenge: The Story of BLM (Chapter 3)*, NPS (Sep. 8, 2008), <https://perma.cc/C358-J7LL>.

79. *Id.*

80. *Id.*

81. Classification and Multiple Use Act of 1964, Pub. L. No. 88-607, 78 Stat. 986.

82. See *Opportunity and Challenge: The Story of BLM (Chapter 3)*, NPS (Sep. 8, 2008), <https://perma.cc/C358-J7LL>.

83. Classification and Multiple Use Act of 1964, Pub. L. No. 88-607, 78 Stat. 986.

future needs of the American people.”⁸⁴ The principles of the multiple-use mandate were designed with the intent to incorporate concerns for the various surface and subsurface resources in a land use planning process.⁸⁵ Specifically, the CMU Act listed ten elements that determine whether public and other federal lands fall under the BLM’s multiple-use mandate:

(1) required for the orderly growth and development of a community or (2) are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops), industrial, or public uses or development or (b) retained at least during this period, in Federal ownership and managed for (1) domestic livestock grazing (2) fish and wildlife development and utilization, (3) industrial development, (4) mineral production, (5) occupancy, (6) outdoor recreation, (7) timber production, (8) watershed protection, (9) wilderness preservation, or (10) preservation of public values that would be lost if the land passed from Federal ownership.⁸⁶

The CMU Act completely abandoned the BLM’s history of classifying lands on a case-by-case basis.⁸⁷ Instead, the CMU Act requires the BLM to plan out the management of all its lands and resources to “best meet the present and future needs of the American people.”⁸⁸ Further, the CMU Act requires all the BLM’s classifications to be consistent with state and local government programs and zoning regulations.⁸⁹

4. The Federal Land Policy and Management Act and the Sagebrush Rebellion

In 1976, the first public lands movement came in response to the BLM passing the Federal Land Policy and Management Act (“FLPMA”).⁹⁰ Congress enacted the FLPMA to “establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.”⁹¹ Congress declared that public lands shall remain under federal ownership, unless it is determined that disposal of a particular parcel of land “will serve the national interest.”⁹² In other words, Congress pronounced United States policy as favoring retention of lands

84. *Id.*

85. *Id.*

86. *Id.*

87. See *Opportunity and Challenge: The Story of BLM (Chapter 3)*, NPS (Sep. 8, 2008), <https://perma.cc/C358-J7LL>.

88. *Id.*

89. *Id.*

90. Driscoll, *supra* note 15, at 1003; see also 43 U.S.C. § 852.

91. 43 U.S.C. § 852.

92. *Id.* § 852(a)(1).

under the BLM's ownership.⁹³ The FLPMA created a presumption against divestiture of BLM land, but never explicitly established that the federal government would control these lands indefinitely.⁹⁴

Landowners, especially those in the west, were upset at the new policy reaffirming federal control over the public lands instead of shifting it towards private and state ownership.⁹⁵ In response, western landowners opposed the policy by arguing in front of Congress and state legislatures for the transfer of public lands from the federal government to the individual states.⁹⁶ Nevada State Senator Dean Rhoads, along with Utah representatives, lit the wildfire that became the Sagebrush Rebellion by pushing legislation that asserted state authority over public lands.⁹⁷

As part of the Sagebrush Rebellion, in 1976, New Mexico claimed that the federal government lacked authority to protect wildlife on public lands.⁹⁸ This dispute was heard by the Supreme Court, where the Justices rejected the notion of any limits to Congress's authority under the Property Clause.⁹⁹ The Court held that "Congress exercises the powers both of a proprietor and of a legislature over the public domain."¹⁰⁰ Despite the Supreme Court's ruling, supporters of the Sagebrush Rebellion continued to file several lawsuits against the Department of the Interior to rebut federal ownership of public lands.¹⁰¹

Later, the Sagebrush Rebellion and FLPMA became a presidential campaign issue.¹⁰² Then-presidential candidate Ronald Reagan endorsed the Sagebrush Rebellion and its supporters in campaign speeches by promising that "the next administration won't treat the West as if it were not worthy of attention. The next administration will reflect the values and goals of the Sagebrush Rebellion. Indeed, we can turn the Sagebrush Rebellion into the Sagebrush Solution."¹⁰³

93. John D. Leshy, *Are U.S. Public Lands Unconstitutional?*, 69 HASTINGS L.J. 499, 507 (2018).

94. *Id.* at 570.

95. Driscoll, *supra* note 15, at 1003.

96. *Id.*

97. *Id.* at 1004.

98. *See Kleppe v. New Mexico*, 426 U.S. 529, 536 (1976).

99. *See id.*; *see also* U.S. CONST. art. IV, § 3, cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.").

100. *Id.* at 539–40.

101. Driscoll, *supra* note 15, at 1004. The lawsuits filed against the Department of the Interior, unlike Utah's present argument in its complaint, did not include any constitutional arguments, ultimately leading to their rejection. *Id.*

102. *Id.*

103. *Id.* (quoting Richard Blakemore, *The Sagebrush Rebellion: A Response to Federal Land Policy in the West*, 36 J. SOIL & WATER CONSERVATION 146, 148 (1981)).

After winning the presidential election by a landslide in 1980, President Reagan's victory managed to suppress the rebellion.¹⁰⁴ However, the Reagan administration noted that the solution proposed by the members of the Sagebrush Rebellion was ineffective, arguing that the policy would only replace federal land management with state land management.¹⁰⁵

Instead of merely swapping owners, the Reagan administration sought to work alongside state and local officials to develop a collaborative regime of land management.¹⁰⁶ Despite the Reagan administration's efforts, the passion that fueled the Sagebrush Rebellion was not fully quenched, and the embers lingered into the 1990s when they sparked the County Supremacy Movement.¹⁰⁷

5. County Supremacy Movement

During the 1990s, federal control of public lands came under attack once more.¹⁰⁸ The County Supremacy Movement, still inspired by the Sagebrush Rebellion, gained traction because of President Clinton's environmental policies.¹⁰⁹ Nevada legislators were particularly emboldened by this movement because the federal government owned 85% of Nevada's land at the time.¹¹⁰ The State legislation passed during the Sagebrush Rebellion became the grounds for the County Supremacists to justify their retaliation against the federal government.¹¹¹

The climax of the rebellion took place in Nye County, Nevada, where the federal government owned 93% of the land.¹¹² County officials attempted to claim ownership of the land.¹¹³ On July 4, 1994, Nye County Commissioner Richard Carver bulldozed a road through Toiyabe National Forest, and he arrested a Forest Service agent for attempting to stop him.¹¹⁴ Consequently, the Department of Justice ("DOJ") filed suit against Nye County to reassert federal ownership of the public lands.¹¹⁵ The county officials failed to defend against the DOJ's suit, marking the end of the

104. *Id.*

105. Driscoll, *supra* note 15, at 1004.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* at 1005.

111. *Id.* The state of Nevada, among the other 11 western states like New Mexico, passed legislation during the Sagebrush Rebellion, declaring that the "State of Nevada owns all public lands within the borders of the State of Nevada." NEV. REV. STAT. § 321.5973 (1979).

112. *See* Driscoll, *supra* note 15, at 1004.

113. *See id.*

114. *See id.*

115. *See id.*

County Supremacy Movement in 1996.¹¹⁶ The Nevada District Court reaffirmed that the United States owned the public lands, not the state and county.¹¹⁷

C. *Utah's Prior Retaliation by State Legislation*

Utah, inspired by the efforts of both the Sagebrush Rebellion and County Supremacy Movement, sought to find new legal arguments to claim state and local ownership of public lands within their state.¹¹⁸ On March 23, 2012, Utah Governor Gary Herbert signed the Utah Transfer of Public Lands Act (“TPLA”).¹¹⁹ Instead of directly asserting state ownership over public lands, the TPLA required Congress to give the public lands within the state to Utah by 2015.¹²⁰ However, the TPLA did not request every federally owned land in Utah.¹²¹ Specifically, the TPLA excluded all national parks, existing national forest areas, lands utilized by the United States Military, federal buildings, tribal lands, and most national monuments.¹²² The basis of Governor Herbert’s demands was that the Utah Enabling Act was a binding promise to dispose of federal lands that the federal government violated.¹²³

The TPLA never lived up to its threats, as no action was taken after the federal government refused to give up the public lands.¹²⁴ Instead of filing further action on the TPLA, Utah proposed more state legislation.¹²⁵ On May 10, 2016, the Utah Public Land Management Act (“UPLMA”) became effective.¹²⁶ With the UPLMA, the Utah legislature intended to build upon the TPLA by providing the necessary infrastructure and procedures for reacquiring and managing unappropriated public lands.¹²⁷ For example, Utah Code § 63L–9–102 created the Department of Land Management, effectively creating the State of Utah’s version of the

116. See *United States v. Nye Cnty.*, 920 F. Supp. 1108, 1117 (D. Nev. 1996).

117. See Nick Lawton, *Utah’s Transfer of Public Lands Act: Demanding a Gift of Federal Lands*, 16 VT. J. ENV’T L. 1, 12 (2014); see also *Nye Cnty.*, 920 F. Supp. at 1117 (reasoning that “the entire weight of the Supreme Court’s decisions requires a finding that title to the federal public lands . . . did not pass to the State of Nevada upon statehood pursuant to the Equal Footing Doctrine”).

118. See Lawton, *supra* note 117, at 13.

119. UTAH CODE ANN. § 63L–6–101 (LexisNexis 2024); see also H.B. 2012, 59th Leg., Reg. Gen. Sess. (Utah 2012).

120. See UTAH CODE ANN. § 63L–6–103.

121. *Id.*

122. See UTAH CODE ANN. § 63L–6–102(3); see also Lawton, *supra* note 117, at 13. The TLPA demands the Grand Staircase-Escalante National Monument. *Id.*

123. See Driscoll, *supra* note 15, at 1008; Enabling Act for State of Utah, 28 Stat. 107 (1894), <https://perma.cc/3VXF-ZWTR>.

124. See UTAH CODE ANN. § 63L–6–103.

125. UTAH CODE § 63L–8.

126. *Id.*

127. *Id.*

BLM.¹²⁸ The UPLMA, similar to the Sagebrush Rebellion's solution, asserts that land management should transfer from federal management to state management, but has no true power to enforce the claim.¹²⁹

D. The Public Lands Use Rule

While Utah was working in the background through the passage of state legislation, new land management regulations broke Utah's silence.¹³⁰ Like the environmental policies that ignited the Sagebrush Rebellion and the County Supremacy Movement, the federal government proposed a third wave of controversial environmental policies.¹³¹ On April 18, 2024, the BLM released the final version of the Public Lands Rule, becoming effective on June 10, 2024.¹³² The Public Lands Rule, officially referred to as the Conservation and Landscape Health Rule, proposes new, stricter guidelines for conservation and public land management.¹³³

Building off the multiple-use approach established by the FLPMA, the Public Lands Rule establishes policy for the BLM to restore and maintain the resilience of ecosystems in public lands.¹³⁴ The Public Lands Rule enforces its policies by “(1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs.”¹³⁵ The rule does not alter the manner in which the BLM implements land use planning decisions.¹³⁶ Instead, this rule modifies the existing practices of the BLM by applying the fundamentals of land health and guidelines to all BLM-managed public lands.¹³⁷

Specifically, the BLM is now required to take “appropriate action” where a specific land use is negatively impacting land health (e.g., oil and gas development disrupting local ecosystems).¹³⁸ The rule shifts the focus from land resilience to identifying and overseeing areas for landscape integrity, prioritizing areas that require restoration, and considering land health in the decision-making process.¹³⁹ In other words, the BLM's consideration and prioritization of land health for decision making has

128. UTAH CODE § 63L-9-102.

129. *See supra* Section II.B.2.

130. *See* Conservation and Landscape Health, 80 Fed. Reg. 40308, 40308 (May 9, 2024) (to be codified at 43 C.F.R. pts. 1600, 6100).

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. *See* Conservation and Landscape Health, 80 Fed. Reg. at 40308.

136. *See id.*

137. *Id.*

138. *Id.*

139. *Id.*

changed, but their multiple-use approach for the execution of those decisions remains unaffected.¹⁴⁰

While ecosystem restoration and resiliency are noteworthy aspirations, Utah opposed the Public Lands Rule.¹⁴¹ Utah believed that instead of building off of the multiple-use approach and the FLPMA, the Public Lands Rule violated both.¹⁴² Utah argued that the Public Lands Rule vastly narrows the definition of conservation and prioritizes conservation over the other congressionally mandated uses set forth in the FLPMA, including but not limited to recreation, livestock grazing, and resource management.¹⁴³

Utah further argued that the BLM's proposed conservation would take the form of a "museum management approach," that is, "just look, don't touch."¹⁴⁴ Consequently, limiting the congressionally approved uses and activities on public lands would violate the BLM's multiple-use and sustained yield obligations.¹⁴⁵ By restricting land use and prioritizing one use over the others mandated by the FLPMA, Utah asserted that the BLM violated the existing laws and processes set forth in the FLPMA.¹⁴⁶

According to Utah, effective conservation requires a hybrid of both active and passive land management.¹⁴⁷ Passive land management is the hands-off, "just look, don't touch" approach they claim the Public Lands Rule will implement.¹⁴⁸ Active land management, in contrast, involves ongoing human effort into managing ecosystems and restoring landscape by removing invasive species.¹⁴⁹ Utah asserted that the state and local governments are ready to accept the responsibilities of managing public lands without the constraints of federal policies.¹⁵⁰ Utah's position was due to its longstanding history of managing its own state park system, wildlife management areas, wildland fire education programs, and their administration under multiple use.¹⁵¹

E. An Introduction to Utah v. United States

Utah, believing it had a stronger basis to enforce the Utah Transfer of Public Lands Act, filed a public lands lawsuit before the United States

140. See Conservation and Landscape Health, 80 Fed. Reg. at 40308.

141. See Public Lands Rule, UTAH PUB. LANDS, <https://perma.cc/6SVN-WG6K> (last visited Sep. 20, 2024, at 11:58 ET).

142. *Id.*

143. *Id.*; see also 43 U.S.C. § 852.

144. See UTAH PUB. LANDS, *supra* note 141.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*; see UTAH PUB. LANDS, *supra* note 141.

151. See Bill of Complaint, *supra* note 3, at 1.

Supreme Court.¹⁵² On August 20, 2024, Utah filed this landmark lawsuit to settle the question: Do public lands belong to the federal government or the individual states?¹⁵³

In its Complaint, Utah sought one count of declaratory judgment and one count of injunctive relief.¹⁵⁴ Utah's prayer for relief had four parts: (1) Declare that indefinite control of public lands is unconstitutional; (2) Declare that 43 U.S.C. § 1701(a)(1) is the United States' official policy and that it is unconstitutional regarding public land policy; (3) Order the United States to relinquish its control of unappropriated public lands in Utah; and (4) Grant the State of Utah any other such relief that the Court may deem proper.¹⁵⁵

1. Arguments Made by the State of Utah

To obtain their prayer for relief, Utah argues that the federal government has no power to retain public lands within Utah indefinitely.¹⁵⁶ The basis of Utah's claim against the United States was a series of constitutional challenges to the FLPMA.¹⁵⁷ Utah has raised five arguments against the constitutionality of indefinite federal ownership of public lands.

a. The Federal Government is One of Limited and Enumerated Powers

First, Utah emphasized that the federal government has limited and enumerated powers.¹⁵⁸ The basis of the United States federalist system, as codified in the Tenth Amendment,¹⁵⁹ is that "the National Government Possesses only limited powers," while the "States and the people retain the remainder."¹⁶⁰ The federal government "can exercise only the powers granted to it" by the Constitution.¹⁶¹ The constitutional balance of leaving general governing to the states "preserves the integrity, dignity, and residual sovereignty of the States," ensuring that they "function as political entities in their own right."¹⁶² The federal balance is not solely meant to

152. *See id.*

153. *Id.*

154. *Id.* at 4.

155. *Id.*

156. *Id.*

157. *See id.* at 2; 43 U.S.C. § 1701.

158. *See* Bill of Complaint, *supra* note 3, at 2.

159. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

160. Bill of Complaint, *supra* note 3, at 4 (quoting *Bond v. United States*, 572 U.S. 844, 854 (2014)).

161. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 405 (1819).

162. Bill of Complaint, *supra* note 3, at 4.

harmonize the vertical power dynamic between federal and state governments; it also ensures the horizontal balance of powers between states.¹⁶³ All states, regardless of whether they are one of the original 13 or later incorporated into the union, “enjoy equal sovereignty.”¹⁶⁴

b. The Framers Granted the Federal Government Only Limited Authority to Retain Land

Second, building upon the first argument, Utah argued that the Framers granted the federal government only limited authority to retain land.¹⁶⁵ The Enclave Clause is the only provision in Article 1 of the Constitution that grants Congress authority to seize parcels of land within a state.¹⁶⁶ The Enclave Clause empowers Congress to:

Exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . .¹⁶⁷

Utah argued that the language of the Enclave Clause indicates that the Framers limited Congress’s authority by requiring state consent for the lands within a state to fall under federal authority.¹⁶⁸ Further, after “cession” by the state of the land, the use of the federally controlled land is restricted to specific and enumerated purposes.¹⁶⁹

The Framers also granted Congress, under the Necessary and Proper Clause, the powers to “make all Laws which shall be necessary and proper for carrying into Execution” its enumerated powers.¹⁷⁰ The courts have interpreted the Necessary and Proper Clause to permit Congress to “acquire and hold real property in any State, whenever such property is needed for the use of the government in the execution of any of its [enumerated] powers.”¹⁷¹ Utah asserted that the Necessary and Proper Clause, pursuant to the Enclave Clause, empowers the federal government

163. *Id.* at 5.

164. *Id.* (quoting *Shelby Cnty. v. Holder*, 570 U.S. 529, 534 (2013)).

165. Bill of Complaint, *supra* note 3, at 5.

166. *Id.*; *see also* U.S. CONST. art. I, § 8, cl. 17.

167. U.S. CONST. art. I, § 8, cl. 17.

168. *Id.* (citing U.S. CONST. art. I, § 8, cl. 17). State consent refers to the approval of the State’s legislature. *Id.*

169. *Id.* (quoting U.S. CONST. art. I, § 8, cl. 17) (“the Seat of Government” or “Forts, Magazines, Arsenals, Dockyards, and other needful Buildings”).

170. U.S. CONST. art. I, § 8, cl. 18.

171. *Van Brocklin v. Tennessee*, 117 U.S. 151, 154 (1886).

to only hold land to carry out its enumerated powers.¹⁷² Thus, Utah claimed that these two clauses do not grant Congress any authority to indefinitely hold unappropriated public lands not used for a specific federal function.¹⁷³

The final constitutional provision that Utah highlighted in its argument, the Property Clause, provides that “[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”¹⁷⁴

Utah contended that the Property Clause grants Congress authority to regulate and dispose of land belonging to the United States, but it does not grant indefinite ownership.¹⁷⁵ Utah pointed to the Congressional Debates about the Articles of Confederation, which they contended confirm that the Framers authorized the United States to sell or dispose of land, not permanently retain it.¹⁷⁶ The Congressional Debates disputed who should claim control over western lands.¹⁷⁷ The solution provided in the Articles of Confederation did not grant Congress the ability to accept cessions of land or to dispose of such land, an omission that was “overlooked by the compilers” of the Articles.¹⁷⁸

Consequently, the Property Clause was incorporated into the United States Constitution to remedy that defect.¹⁷⁹ As the Framers understood the Property Clause to merely authorize the disposal of western lands, not hold on to such lands indefinitely, it was adopted with minimal controversy.¹⁸⁰ From this narrow understanding and interpretation, the Property Clause serves as a primary disposal function, not a permanent retainer for public lands.¹⁸¹

172. *Id.*; see also *supra* note 140.

173. *Id.*

174. U.S. CONST. art. IV, § 3, cl. 2.

175. Bill of Complaint, *supra* note 3, at 7.

176. *Id.* at 8.

177. *Id.* (quoting Paul W. Gates, *History of Public Land Law Development* 49–51 (1968)).

178. *Id.* (quoting THE FEDERALIST NO. 43 (James Madison)).

179. *Id.*

180. *Id.* at 9.

181. See Bill of Complaint, *supra* note 3, at 7.

c. Founding-Era Practice Confirms that the Federal Government Only has Limited Authority to Govern the Land

Third, Utah argued that the Founding Era confirmed that the federal government only has limited authority to govern this land.¹⁸² Congress has consistently exercised its authority under the Property Clause to dispose of public lands in western states.¹⁸³ The only instances in which the federal government held public lands indefinitely were to serve one of its enumerated Article I powers.¹⁸⁴ Vermont and Kentucky, the first and second states to be added after the original 13, were ceded “full ownership of any public lands remaining ungranted,” such that “the United States had no land within them.”¹⁸⁵

When Tennessee attempted to obtain ownership of the public lands within the state, Congress asserted that Tennessee had “acquired the jurisdiction over” public lands within its borders when it became a state but that “the right of sale” remained with the United States.¹⁸⁶ Later, to establish the precedent for all future state incorporations, Congress imposed restrictions on Ohio that required its state constitution to be consistent with the Northwest Ordinance of 1787.¹⁸⁷ The Northwest Ordinance provided that “new States[] shall never interfere with the primary disposal of the Soil by the United States in Congress assembled.”¹⁸⁸ In exchange, 5% of the proceeds from public land sales would be invested in state improvements.¹⁸⁹ While Congress denied new states’ retention of the public lands within their state, Congress was merely arguing that the federal government has authority to dispose of the lands.¹⁹⁰ Utah argued that Congress has never stated that the federal government can retain such lands without being purposed for an enumerated Article I power.¹⁹¹

182. *Id.* at 10.

183. *Id.* at 7; *see, e.g.*, 1 Stat. tbl. IV, pp. xcvi–ciii (listing over 100 statutes related to the “survey and sale of public lands” from 1791 to 1845).

184. *See* Bill of Complaint, *supra* note 3, at 7; *see, e.g.*, Act Authorizing Entry of Vessels at the Port of New Orleans, ch. 21, 3 Stat. 347, 347 (Mar. 1, 1817) (The federal government maintained public land ownership to produce “[t]imber for the Navy of the United States.”).

185. Bill of Complaint, *supra* note 3, at 7 (quoting Paul W. Gates, *History of Public Land Law Development* 287 (1968)).

186. Bill of Complaint, *supra* note 3, at 10 (quoting No. 57: Sales of Lands Acquired by the Cession of North Carolina (May 9, 1800), in 1 *American State Papers: Public Lands* 98 (Walter Lowrie ed., 1834)).

187. *See* Northwest Ordinance of 1787, ch. 40, 2 Stat. 173, 174 (Apr. 30, 1802).

188. Bill of Complaint, *supra* note 3, at 10.

189. *Id.*; *see also* 2 Stat. at 175.

190. *See* Bill of Complaint, *supra* note 3, at 7.

191. *Id.* at 14.

d. The Utah Enabling Act Underscores the Federal Government's Obligation to Dispose of Unappropriated Land

Fourth, Utah argued that the Utah Enabling Act underscores the federal government's obligation to dispose of unappropriated land.¹⁹² The Utah Enabling Act, which formed the State of Utah, reflects how Congress only intended to hold on to the public lands temporarily.¹⁹³ Section 3 of the Utah Enabling Act discloses how the federal government intended to dispose of the public lands within the new state:

The people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof . . . and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States¹⁹⁴

Likewise, as established by Ohio's incorporation into the Union, § 9 of the Act grants the new State of Utah 5% of the proceeds of the public land sales within Utah, "which shall be sold by the United States subsequent to the admission of said State into the Union."¹⁹⁵ The terms of the Utah Enabling Act indicate that the public lands within Utah "shall be sold by the United States"¹⁹⁶ to ensure that the title of the United States has been "extinguished."¹⁹⁷ According to Utah, Congress promised the eventual return of public lands and proceeds from that sale—a promise that the United States has failed to uphold.¹⁹⁸

e. Federalism Reinforces the Conclusion that the Federal Government Cannot Retain Unappropriated Land Within a State

Lastly, Utah argued that the basic principles of federalism reinforce the conclusion that the federal government cannot retain unappropriated land within a state.¹⁹⁹ Throughout the 1800s, the Supreme Court affirmed the position that the federal government was temporarily holding public land as a "mere proprietor" until it disposes of the land pursuant to the

192. See Bill of Complaint, *supra* note 3, at 11.

193. *Id.*; see also Utah Admission as a State Act, ch. 138, 28 Stat. 107 (July 16, 1894).

194. Bill of Complaint, *supra* note 3, at 15.

195. 28 Stat. at 110.

196. *Id.*

197. *Id.* at 108.

198. See Driscoll, *supra* note 15, at 1010.

199. See Bill of Complaint, *supra* note 3, at 16.

Property Clause.²⁰⁰ “[U]nless used as a means to carry out the purposes of the [federal] government,” federal lands were rendered “subject to the legislative authority and control of the states equally with the property of private individuals.”²⁰¹

As time progressed, the United States viewed its ownership of public lands more expansively, potentially undercutting the states’ sovereign authority over the lands.²⁰² Because of this, Utah argued states no longer have authority to regulate public lands within their borders,²⁰³ and the federal government now “exercises the powers both of a proprietor and of a legislature” over all federal lands.²⁰⁴ Utah contended that the result of this unprecedented expansion is a substantial and disproportionate power imbalance between the vertical federal-state balance and the horizontal balance between states.²⁰⁵ Virtually all states east of the Rocky Mountains have retained sovereign authority within their boundaries.²⁰⁶ In contrast, the western states, where the federal government continues to retain vast amounts of public lands, are deprived of sovereign authority over the land within their borders.²⁰⁷ According to Utah, the continuation of the federal government’s indefinite land ownership within Utah imposes “grave and irreparable injuries on the State.”²⁰⁸

In sum, Utah asserted that the federal government has no constitutional authority to indefinitely hold public lands within a state, over the state’s objection, and without using the lands for any enumerated federal powers.²⁰⁹ Despite this, the federal government continues to hold 18.5 million acres of public land within Utah, over Utah’s objection, and with no indication to dispose of the land or use it for any federally enumerated power.²¹⁰ The lack of constitutional authority has been reinforced by the FLPMA, which declares that it is Congress’s official policy to maintain federal ownership of public lands unless disposal of a particular parcel of land will serve the national interest.²¹¹ According to Utah, the federal government’s unconstitutional ownership has caused the state serious and irreparable harm.²¹² For these reasons, Utah requested

200. *Id.* at 17 (quoting *United States v. City of Chicago*, 48 U.S. (7 How.) 185, 194 (1849)).

201. *Id.* (quoting *Ft. Leavenworth R.R. Co. v. Lowe*, 114 U.S. 525, 531 (1885)).

202. *Id.* at 18.

203. *Id.* (citing *Utah Power & Light Co. v. United States*, 243 U.S. 389, 403 (1917)).

204. *Id.* (quoting *Kleppe v. New Mexico*, 426 U.S. 529, 540 (1976)).

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.* at 22.

209. *See* Bill of Complaint, *supra* note 3, at 26.

210. *Id.*

211. *Id.*; *see* 43 U.S.C. § 1701(a)(1).

212. *See* Bill of Complaint, *supra* note 3, at 28.

that the federal government begin disposing of the public lands within Utah under the existing and relevant authorities.²¹³

2. The United States' Arguments

The United States filed its response to Utah's suit on November 21, 2024.²¹⁴ In the United States' response, the federal government explained its constitutional authority to retain ownership of federal lands within Utah.²¹⁵ The United States asserted its authority and opposed Utah's motion for leave to file a bill of complaint on three distinct arguments.²¹⁶

a. Utah's Complaint Does Not Satisfy the Supreme Court's Criteria for Original Jurisdiction

First, the United States argued that Utah's complaint does not satisfy the usual criteria for the Supreme Court to hear original suits.²¹⁷ A plaintiff pursuing an original action must show that it is "appropriate" for the Supreme Court to exercise its original jurisdiction.²¹⁸ When deciding to hear a case, the Supreme Court considers two factors: the availability of an alternative forum and the nature of the state's interest.²¹⁹ The United States asserted that neither factor supported exercising original jurisdiction in Utah's suit.²²⁰

The Supreme Court's original jurisdiction over suits between the United States and a state may also be heard in a federal district court.²²¹ Utah itself acknowledged that it could have brought the suit in federal district court first.²²² The Supreme Court has "summarily denied" leave in similar cases filed by states against the United States or its agencies.²²³ Despite Utah claiming that this issue is of "nationwide importance,"²²⁴ the United States pointed out that the Supreme Court generally only hears cases after both the district court and court of appeals have heard the

213. *Id.*

214. See Def.'s Br. in Opp'n at 1, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428.

215. See *id.* at 7.

216. See *id.*

217. See *id.* at 8.

218. See *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992); see also U.S. CONST. art. III, § 2, cl. 2 ("In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction.").

219. See Def.'s Br. in Opp'n, *supra* note 214, at 8.

220. See *id.*

221. See 28 U.S.C. §§ 1251(a), (b)(2).

222. See Pet'r's Br. in Supp.at 7, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428.

223. *Nebraska v. Wyoming*, 515 U.S. 1, 27 n.2 (1995) (Thomas, J., concurring in part and dissenting in part); see, e.g., *Alaska v. United States*, 144 S. Ct. 546 (2024).

224. Pet'r's Br. in Supp., *supra* note 222, at 13.

party's arguments.²²⁵ In other words, the United States argued the Supreme Court should not exert its original jurisdiction over Utah's claim.

b. Utah's Complaint Raises Procedural and Jurisdictional Concerns

Second, the United States argued that Utah's complaint faces imposing jurisdictional and procedural barriers.²²⁶ According to the United States, the Supreme Court routinely denies leave to file a bill of complaint if it faces "jurisdictional" or other "threshold barriers."²²⁷ Here, the United States argued Utah should be denied leave because "Utah's suit is not justiciable, Utah lacks standing, the United States is immune from Utah's suit, and Utah's suit is untimely."²²⁸

Regarding Utah's demands, the United States argued that courts cannot direct the "United States to begin the process of disposing of its unappropriated lands within Utah."²²⁹ The Supreme Court has previously acknowledged that "the courts cannot compel [Congress] to set aside lands for settlement."²³⁰ Nor, the United States asserted, could a court order the executive branch to dispose of federal lands without Congress's consent.²³¹

Further, the United States asserted that Utah had no standing to bring the action.²³² The United States noted that Utah alleges Congress's failure to convey the public land has injured the state by depriving it of tax revenue, but Utah has not shown how judicial relief would redress those injuries as required to have standing.²³³ The United States also claims that, as a sovereign, it is immune from suit without its consent.²³⁴ Utah did not cite any statute that waives the United States' sovereign immunity.²³⁵ Lastly, the United States asserted that Utah had to file its claim "within six years after the right of action first accrues."²³⁶ As Utah had brought the suit 176 years after the United States acquired the public lands at issue and

225. See Def.'s Br. in Opp'n, *supra* note 214, at 10.

226. See *id.* at 14.

227. *Federal Republic of Germany v. United States*, 526 U.S. 111, 112 (1999) (per curiam).

228. See Def.'s Br. in Opp'n, *supra* note 214, at 14.

229. Bill of Complaint, *supra* note 3, at 28; see also *Franklin v. Massachusetts*, 505 U.S. 788, 827–29 (1992) (Scalia, J., concurring in part and concurring in the judgment).

230. *Light v. United States*, 220 U.S. 523, 537 (1911).

231. See Def.'s Br. in Opp'n, *supra* note 214, at 15.

232. See *id.* at 17.

233. See *id.*

234. See *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

235. See Def.'s Br. in Opp'n, *supra* note 214, at 18.

236. 28 U.S.C. § 2401(a).

48 years after Congress passed the statutory provisions in question, the United States argued Utah's suit was untimely.²³⁷

c. Utah's Claim Lacks Merit

Finally, the United States argued that Utah's claim—that Congress is exceeding its authority by retaining ownership of federal lands in Utah—was unsubstantiated.²³⁸ The United States asserted that the Constitution empowers the federal government to hold public lands within a state.²³⁹ Specifically, the Property Clause empowers Congress to make “all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.”²⁴⁰ The United States claimed that the FLPMA policy establishing that “the public lands be retained in Federal ownership,”²⁴¹ falls squarely within the scope of the Property Clause.²⁴²

The Property Clause also grants Congress the authority “to dispose of” the United States' property.²⁴³ This authority includes “the absolute right to prescribe the times, the conditions, and the mode” of the transfer.²⁴⁴ Supreme Court precedent suggests that Congress has discretion to retain or dispose of public lands.²⁴⁵ Congress “may deal with [federal] lands precisely as a private individual may deal with his farming property.”²⁴⁶ The United States further alleged that the power to “withdraw public lands in [a state] from sale” is not subject to any limitations.²⁴⁷

In sum, the United States initially asserted that Utah's suit did not satisfy the usual criteria for the Supreme Court's original jurisdiction.²⁴⁸ Further, the United States argued that Utah's complaint suffers from significant jurisdictional and procedural barriers.²⁴⁹ Third, the United States contended that Utah's claim lacks merit.²⁵⁰ Lastly, the United States argued that any policy arguments raised by Utah are not for the Supreme Court to analyze.²⁵¹ For these reasons, the United States requested that the Supreme Court deny Utah's leave to file a bill of complaint.²⁵² On January

237. See Def.'s Br. in Opp'n, *supra* note 214, at 18.

238. See Def.'s Br. in Opp'n, *supra* note 214, at 21.

239. See *id.*

240. U.S. CONST. art. IV, § 3, cl. 2.

241. 43 U.S.C. § 1701(a)(1).

242. See Def.'s Br. in Opp'n, *supra* note 214, at 21.

243. U.S. CONST. art. IV, § 3, cl. 2.

244. *Gibson v. Chouteau*, 13 Wall. 92, 99 (1872).

245. See Def.'s Br. in Opp'n, *supra* note 214, at 23.

246. *Camfield v. United States*, 167 U.S. 518, 524 (1897).

247. *Stearns v. Minnesota*, 179 U.S. 223, 243 (1900); see also *Gibson*, 13 Wall. at 99.

248. See Def.'s Br. in Opp'n, *supra* note 214, at 31.

249. See *id.*

250. See *id.*

251. See *Light v. United States*, 220 U.S. 523, 537 (1911).

252. See Def.'s Br. in Opp'n, *supra* note 214, at 31.

13, 2025, the Court denied Utah's leave to file a complaint without elaboration.²⁵³

III. ANALYSIS

After decades of contention between various counties, state legislatures, and campaign promises, the question finally arrived at the Supreme Court: who owns the public lands within states?²⁵⁴ The Supreme Court's refusal to hear the case halted the momentum toward a final resolution on public land ownership. Rather than forcing Utah to start at the bottom of the judicial system and work its way back up, the Supreme Court should have exercised its original jurisdiction to grant Utah leave. After granting Utah leave, the Supreme Court should have ultimately ruled in favor of the United States on the merits.²⁵⁵ Specifically, the Supreme Court's analysis should have addressed the constitutionality of the FLPMA and Congress's powers to retain federal lands within a state.²⁵⁶ Additionally, the Supreme Court should have ruled in favor of the United States on public policy grounds.²⁵⁷

A. The Supreme Court Should Exercise Its Original Jurisdiction

The Supreme Court is vested with original jurisdiction over cases "in which a State shall be party."²⁵⁸ As granted by the Constitution, the Supreme Court retains discretion to exercise its original jurisdiction.²⁵⁹ The Court has sparingly used this discretion to sit as a court of first and last resort.²⁶⁰ In deciding whether to exert original jurisdiction, the Supreme Court examines (1) "the nature of the interest of the complaining State," focusing on the "seriousness and dignity of the claim," and (2) "the availability of an alternative forum in which the issue tendered can be resolved."²⁶¹ The Supreme Court is structured "as an appellate tribunal" and is "ill-equipped for the task of factfinding."²⁶² Those two factors favor the Supreme Court not exercising its original jurisdiction.

253. See *Utah v. United States*, 145 S. Ct. 1134, 1 (2025) (mem.).

254. See Bill of Complaint, *supra* note 3, at 1.

255. See *infra* Section III.A.

256. See *infra* Section III.B.

257. See *infra* Section III.B.3.

258. U.S. CONST. art. III, § 2, cl. 2.

259. See *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 499 (1971).

260. See *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992).

261. *Id.* at 76–77.

262. See *Wyandotte*, 401 U.S. at 498.

1. The Seriousness and Dignity of Utah's Claim Warrants the Supreme Court to Exercise Original Jurisdiction

However, Utah's interests, along with the seriousness and dignity of its claim, warrant original jurisdiction. The clashing interests of state and federal sovereignty in this claim have been apparent through movements like the Sagebrush Rebellion and County Supremacy Movement.²⁶³ The lack of an established ground rule on public lands will likely incite further conflicts without a resolution on the ultimate interpretation of the law.

Further, there is no need for the Supreme Court to "play the role of the factfinder" in this case.²⁶⁴ The central function of the Supreme Court is resolving "matters of federal law and national import."²⁶⁵ Utah's suit deals with no facts.²⁶⁶ Utah is questioning the constitutionality of the FLPMA and challenging an alleged overstep of the Executive Branch.²⁶⁷ The United States rebutted this, asserting the claim that the United States "simply holding" 18.5 million acres of land without "using it to execute any of its enumerated powers,"²⁶⁸ must first be resolved in a lower federal court.²⁶⁹

While both parties agree that this case *could* have been brought in a federal district court, the Supreme Court does not need to engage in any true factfinding that would favor such a path. Utah is not disputing the United States' title to public lands.²⁷⁰ Rather, the state is disputing whether the federal government's indefinite control of public lands within the state is constitutional.²⁷¹ These claims are strictly constitutional, tailored to the "high claims affecting state sovereignty" that call for an exercise of the Supreme Court's original jurisdiction.²⁷² This public lands dispute raises the fundamental principle that all states enjoy equal sovereignty.²⁷³ The Supreme Court has often exercised its original jurisdiction over cases that dispute territorial sovereignty.²⁷⁴ Utah's suit is akin to those many

263. See *infra* Section II.B.4.

264. *Id.*

265. *Id.*

266. Bill of Complaint, *supra* note 3, at 1.

267. See Pet'r's Br. in Supp., *supra* note 222, at 7.

268. Bill of Complaint, *supra* note 3, at 1.

269. See Def.'s Br. in Opp'n, *supra* note 214, at 10.

270. See Reply in Supp. Bill of Complaint at 2, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428.

271. *Id.*

272. *South Carolina v. North Carolina*, 558 U.S. 256, 278 (2010) (Roberts, C.J., concurring in part and dissenting in part).

273. See Reply in Supp. Bill of Complaint, *supra* note 270, at 2.

274. See, e.g., *California ex rel. State Lands Comm'n v. United States*, 457 U.S. 273, 277 n.6 (1982) (describing the dispute regarding ownership and sovereignty over oceanfront land on the coast of California).

sovereign disputes, disputing both the United States' indefinite retention of the public lands and its core interests.²⁷⁵

Regardless, Utah's suit will inevitably reach the Supreme Court, whether by a motion for leave to file a bill of complaint or by multiple appeals and requesting a writ of certiorari.²⁷⁶ Exercising original jurisdiction would save the federal courts, Utah, and the United States time and cost in adjudicating this matter of national import.²⁷⁷

2. The Supreme Court is the Appropriate Forum to Hear Utah's Case

Second, the Supreme Court is the appropriate forum to hear Utah's public lands dispute. The Supreme Court's jurisdiction is not exclusive;²⁷⁸ it is reserved for appropriate cases of nationwide importance.²⁷⁹ In *South Carolina v. Regan*, a case that challenged a federal law that governed federal taxation of state bonds, arguments were first heard by the Supreme Court because "the manner in which a State may exercise its borrowing power is a question that is of vital importance to all 50 states."²⁸⁰

Likewise, Utah's suit demonstrates national importance to all 50 states. The federal government owns public lands in every state.²⁸¹ All 50 states, especially the 13 that have filed *amici curiae* in support of Utah, are invested in this dispute.²⁸² By hearing this challenge, the Supreme Court would resolve a purely legal issue nationwide, rather than having it litigated by each state in piecemeal fashion across various federal courts.²⁸³ These states will not relent until it is made "clear that western States are not second-class sovereigns."²⁸⁴ The Supreme Court's intervention is necessary.²⁸⁵

275. See Pet'r's Br. in Supp., *supra* note 222, at 7.

276. See *id.*

277. See *id.*

278. See 28 U.S.C. § 1251(b)(2).

279. *South Carolina v. Regan*, 465 U.S. 367, 382 (1984) (plurality opinion).

280. *Id.* at 382.

281. See Vincent, *supra* note 20, at 7.

282. Idaho, Alaska, Wyoming, and Arizona filed Amicus in support on October 22, 2024. See Brief for Idaho et al. as Amicae Curiae Supporting Plaintiffs at 1, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428. Likewise, Iowa, Alabama, Arkansas, Mississippi, Nebraska, North Dakota, South Carolina, South Dakota, and Texas filed their own Amicus in support the same day. See Brief for Iowa et al. as Amicae Curiae Supporting Plaintiffs at 1, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428.

283. See Brief for Idaho et al. as Amicae Curiae Supporting Plaintiffs at 26, *Utah v. United States*, 145 S. Ct. 1134 (2025) (No. 22O160), 2025 WL 76428.

284. *Id.* at 27.

285. *Id.*

B. The Supreme Court Should Rule in Favor of the United States

The Utah public lands suit will forever alter the public lands held within all 50 states. As such, the Supreme Court should rule in favor of the United States. Under the Property Clause, Congress's enumerated powers include the power to hold public lands within a state.²⁸⁶ Congress's constitutional discretion allows it to decide whether to retain or dispose of public lands.²⁸⁷ Moreover, Founding-Era history confirms that the federal government was never intended to entirely divest itself of all public lands.²⁸⁸ Lastly, a favorable ruling for Utah would have serious consequences for public lands from both an environmental and logistical perspective.²⁸⁹

1. The FLPMA Falls Within the Scope of Congress's Constitutional Authority

Utah's arguments fail because the FLPMA falls within the scope of Congress's constitutional authority.²⁹⁰ The Property Clause empowers Congress to dispose of the United States' property as it sees fit.²⁹¹ The United States undoubtedly owns all federal public lands within states.²⁹² The President, provided they have a two-thirds vote of the Senate, has the power to "make treaties."²⁹³ The treaty power includes the power to acquire land from foreign sovereigns and Native American tribes.²⁹⁴ The Treaty of Guadalupe Hidalgo was the executive exercising its treaty powers to acquire the public lands in Utah.²⁹⁵

The federal government, in rightful ownership of these lands, is constitutionally permitted to hold on to these lands indefinitely.²⁹⁶ The constitutionality of the FLPMA's provisions and regulations are well within the scope of the Property Clause.²⁹⁷ Utah's main assertion is that these provisions and regulations are unconstitutional because they are not needful; the government is "simply holding" on to the land without any federal purpose.²⁹⁸ However, the needfulness and effectiveness of

286. See U.S. CONST. art. IV, § 3, cl. 2.

287. See *Gibson v. Chouteau*, 13 Wall. 92, 99 (1872).

288. See *supra* Section II.E.2.c.

289. See *infra* Section III.B.3.

290. See U.S. CONST. art. IV, § 3, cl. 2.

291. *Id.*

292. See *supra* Section II.A.2

293. U.S. CONST. art. II, § 2, cl. 2.

294. See *Hooven & Allison Co. v. Evatt*, 324 U.S. 652, 673 (1945).

295. See Treaty of Guadalupe Hidalgo, 9 Stat. 922 (July 4, 1848), <https://perma.cc/4JM8-2T95>.

296. See U.S. CONST. art. IV, § 3, cl. 2.

297. See *Id.*

298. See Pet'r's Br. in Supp., *supra* note 222, at 7.

Congress's environmental policies are for Congress—not the courts—to decide.²⁹⁹

On the same accord, Utah claimed that the United States “earns significant revenue by leasing [its] lands to private parties for activities such as oil and gas production, grazing, and commercial filmmaking,” to prove Utah’s harm.³⁰⁰ Congress has the sole power to decide “the absolute right to prescribe the times, the conditions, and the mode” of the transfer of public lands.³⁰¹ This power of disposal enables “the Government to derive profit through royalties.”³⁰²

Establishing the United States’s transfer of public lands also includes the ability to withhold them from sale.³⁰³ The power to both sell public lands or “withhold them from sale” is for Congress alone to decide.³⁰⁴ Congress’s authority to dispose of or retain public lands is “complete,”³⁰⁵ and is “subject to no limitations.”³⁰⁶ Lastly, in *Light v. United States*, the Court held that the right to “withhold or preserve” public lands is “incidental of proprietorship.”³⁰⁷ This holding solidifies that the United States, by being the proprietor of public lands, may hold on to the lands as long as it deems fit.³⁰⁸

2. Founding-Era History Confirms Public Lands Were Never Intended to Be Entirely Divested

Second, Founding-Era legislative history confirms that not all public lands were to be divested.³⁰⁹ James Madison described the Western lands as “a mine of vast wealth to the United States.”³¹⁰ St. George Tucker, the author of William Blackstone’s *Legal Commentaries on the Laws of England*, recommended that the United States “reserve of one half, or some other considerable proportion of the lands remaining unsold.”³¹¹ Later, in 1785, the Confederation Congress reserved “four lots” within

299. See *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976).

300. See Bill of Complaint, *supra* note 3, at 1.

301. See *Gibson v. Chouteau*, 13 Wall. 92, 99 (1872).

302. *Ashwander v. TVA*, 297 U.S. 288, 331 (1936).

303. See *Stearns v. Minnesota*, 179 U.S. 223, 243 (1900).

304. *Camfield v. United States*, 167 U.S. 518, 524 (1897).

305. *United States v. San Francisco*, 310 U.S. 16, 30 (1940); see also *Sinclair v. United States*, 279 U.S. 263, 294 (1929).

306. *Gibson*, 13 Wall. at 99.

307. See *Light v. United States*, 220 U.S. 523, 536 (1911).

308. *Id.*

309. See THE FEDERALIST NO. 38, at 248 (Jacob E. Cooke ed. 1961).

310. *Id.*

311. St. George Tucker, *Blackstone’s Commentaries App.* 285 (1803). Blackstone’s *Commentaries* are recognized as the major treatise of American Law. *Blackstone’s Commentaries: with Notes of Reference, to the Constitution and Laws, of the Federal Government of the United States; and of the Commonwealth of Virginia*, WYTHEPEDIA, <https://perma.cc/9CTC-2YFE> (last visited Mar. 1, 2025, at 10:15 ET).

every township they sold in the western states “for the United States.”³¹² Various other acts, like the Antiquities Act of 1906, authorized the executive to reserve lands like national monuments.³¹³

These acts show that the United States has consistently followed a “deeply embedded traditional way of conducting government.”³¹⁴ “Utah’s express objection” over the land is null,³¹⁵ as federal laws will always remain the “supreme Law of the Land.”³¹⁶ Moreover, the Enclave Clause does not affect whether Congress requires a state’s consent.³¹⁷ The Enclave Clause’s requirement of a state legislature’s consent only pertains to federal *enclaves*, not federal *lands*.³¹⁸ States still maintain jurisdiction over federal lands within their boundaries and may enforce their laws accordingly.³¹⁹ Thus, Congress has always exercised the power of sovereignty over federal lands.³²⁰ Founding-Era history and Congress’s enumerated powers only confirm its claim to federal lands.

3. Utah’s Claim over Federal Lands is Against Public Interest

Lastly, Utah’s assertion over federal lands is against the public interest. Utah’s arguments are supported by its desire to acquire more land for mining and drilling.³²¹ Utah is a booster for fossil fuels, extracting 100,000 barrels of oil and 35,000 tons of coal daily.³²² Currently, the federal government spends \$300 million annually on public lands.³²³ The only way for Utah to match the United States’ expenses would be to aggressively ramp up oil and gas drilling.³²⁴

Adding to the costs, Utah approved \$2.6 million to spend on a public relations campaign before filing suit.³²⁵ Utah named the media campaign “Stand for Our Land: Let Utah Manage Utah Land.”³²⁶ Utah’s promotion

312. 28 *J. Continental Cong. 1774–1789*, at 378 (John C. Fitzpatrick ed. 1933).

313. See 54 U.S.C. § 320301.

314. *Trump v. Mazars USA, LLP*, 591 U.S. 848, 869 (2020).

315. *Pet’r’s Br. in Supp.*, *supra* note 222, at 22.

316. U.S. CONST. art. VI, cl. 2.

317. See *Kleppe v. New Mexico*, 426 U.S. 529, 541 (1976).

318. *Id.*

319. *Id.* at 543.

320. See *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917).

321. See Brian Maffly, *Does Utah’s support for fossil fuel production violate youths’ constitutional rights?*, THE SALT LAKE TRIB. (Nov. 9, 2022, 19:23 MT), <https://perma.cc/MM7W-A87N>.

322. *Id.*

323. See Jan E. Stambro, *Analysis of a Transfer of Federal Lands to the State of Utah*, 74 B.E.B.R. 3 (2014), <https://perma.cc/UN3K-3JHV>.

324. *Id.*

325. *Utah’s land grab lawsuit has cost taxpayers over \$3 million, so far*, CTR. FOR W. PRIORITIES (Nov. 18, 2024), <https://perma.cc/Q9ES-XB6D>.

326. See *Stand for our Land – Let Utah Manage Utah Land*, STAND FOR OUR LAND UTAH, <https://perma.cc/7M8A-V7YP> (last visited Sep. 20, 2024, at 11:56 ET).

campaign, like the \$500,000 brief Utah wrote to file the case, proved a failure.³²⁷ Colorado College's State of the Rockies Report indicated that 82% of Utahns support the conservation efforts of public lands over mining and drilling efforts.³²⁸ The same study indicated that 89% of voters encourage "managing public lands to ensure there are more outdoor places free of light pollution to see the stars at night."³²⁹

Utahns do not want more access; they want conservation and preservation. As stated by Laura Peterson, a staff attorney with the Southern Utah Wilderness Alliance, "[c]ertainly, that is more important than a few people driving [through Moab, Utah]."³³⁰ The motivation behind the Utah public lands lawsuit is not supported by its people or the law. For these reasons, the Supreme Court should have ruled in favor of the United States.

IV. CONCLUSION

"From the earliest times," Congress has been regulating the federal public lands within states.³³¹ This territorial reign has been brought into question for decades.³³² Various movements, including the Sagebrush Rebellion and the County Supremacy Movement, have displayed the western states' opposition against federal public lands.³³³

In *Utah v. United States*, the Supreme Court missed its opportunity to finally resolve the public lands dispute. Although this failure to resolve the conflicts means the federal government will continue to hold the land while Utah attempts to refile the lawsuit in the lower courts, the issue has only been delayed. Decades of conservation efforts, resource management, and 18.5 million acres of land are at stake.

The federal government, backed by its constitutional authority and Founding-Era history, is the rightful owner of public lands. Proprietors can withhold or dispose of land within their sole discretion.³³⁴ The BLM's land management efforts are dedicated to conservation and preservation so future generations may continue to enjoy nature to its fullest.³³⁵ By

327. See Maffly, *supra* note 309.

328. See Max Saliman, *2024 Conservation in the West Poll*, COLO. COLL., <https://perma.cc/74B6-PFWT> (last visited Feb. 6, 2025, at 21:23 ET).

329. See *Conservation and Public Lands in the West*, COLO. COLL., <https://perma.cc/9MVX-YJNW> (last visited Feb. 6, 2025, at 21:28 ET).

330. Karin Brulliard, *Land grab or land rights? Utah eyes millions of acres of public terrain*, WASH. POST (Jan. 19, 2025), <https://perma.cc/XE86-ZCNU>.

331. See *Utah Power & Light Co. v. United States*, 243 U.S. 389, 404 (1917).

332. See *supra* Section II.A.2.

333. See *supra* Section II.B.4.

334. See *Gibson v. Chouteau*, 13 Wall. 92, 99 (1872).

335. See *supra* Section II.B.

affirming the United States' claim to federal public lands, the Supreme Court will ensure that public land remains in the public's hands.