

No. 160, Original

IN THE
Supreme Court of the United States

UTAH,

Plaintiff,

v.

UNITED STATES,

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

**BRIEF OF *AMICI CURIAE* COALITION OF
ARIZONA/NEW MEXICO COUNTIES FOR
STABLE ECONOMIC GROWTH, NEW MEXICO
FEDERAL LANDS COUNCIL AND NEW MEXICO
FARM AND LIVESTOCK BUREAU IN SUPPORT
OF PLAINTIFF STATE OF UTAH'S MOTION
FOR LEAVE TO FILE BILL OF COMPLAINT**

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

The Coalition of Arizona/New Mexico Counties for Stable Economic Growth (Coalition of Counties) is a nonprofit corporation formed December of 1990, and operated pursuant to New Mexico statutes. The Coalition of Counties consists of local governments, including the Boards of County Commissioners for Chavez County, Eddy County, Lea County, Luna County, Roosevelt County, Hildago County, Otero County, Socorro County, Sierra County, McKinley County and Catron County in New Mexico and the Boards of County Supervisors of Gila County, Graham County, Cochise County, Apache County, and Navajo County in Arizona, as well as representatives from agriculture and industry organizations, and private individuals and businesses located within these two states.

The mission of the Coalition of Counties is to protect the tax base and rural economies of Arizona and New Mexico. This mission is accomplished by advocating for the protection of private property and the wise use of federal lands.² The Coalition members also have a special

1. On September 30, 2024, 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 Leave to File a Bill of Complaint 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. Federal lands are those that have been designated by statute as being retained in federal management such as National Forests, National Parks, military bases, post offices and similar lands.

interest in the federal government's perpetual ownership of unappropriated "public" lands because in addition to Congressionally created "federal lands," these Counties also consist of large amounts of unappropriated land managed by the Bureau of Land Management (BLM). The federal government's retention and control of these lands both negatively impacts the tax revenue in these Counties and inhibits state sovereignty including eminent domain and police powers on those unappropriated lands.

The New Mexico Federal Lands Council (NMFLC) was founded in the mid-1970s by ranchers who graze on the federal and public lands and operates as a nonprofit organization to lobby for the interests of ranchers who utilize those lands for livestock grazing.

New Mexico Farm and Livestock Bureau ("NMFLB") is the largest grass-roots general farm organization in the New Mexico, representing over 20,000 members. Agriculture represents over 13% of the economy of New Mexico (approximately \$3.44 billion annually). NMFLB advocates on behalf of its membership in legislative, regulatory, and litigation matters. As a voice of agriculture, NMFLB has a profound interest in issues related to land ownership, management, and use, particularly when those issues impact farmers, ranchers, and the broader rural economy. NMFLB strongly believes that state and local land management, rather than federal control, is more responsive to the needs and concerns of rural communities, fosters better stewardship of natural resources, and encourages sustainable economic development.

SUMMARY OF ARGUMENT

The federal government owns approximately 640 million acres of land across the United States, including approximately 28 million acres (38.6%) in Arizona and over 24 million acres (31.7%) in New Mexico. CAROL H. VINCENT ET AL, CONG. RESEARCH SERV., R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA 1, 7-8 (2020) [hereinafter FEDERAL LAND OWNERSHIP]. Of this total of 640 million acres, about 244.4 million acres are managed by the Bureau of Land Management (BLM) which equates to 13.5 million acres in New Mexico and 12.1 million acres in Arizona. These lands are largely unappropriated public lands that the federal government has retained without ever designating a specific use as required by the United States Constitution.

Accordingly, the State of Utah has brought a legitimate and unanswered legal question to this Court to determine whether the federal government may continue to indefinitely retain unappropriated land. This Court has original jurisdiction over legal questions such as this. Furthermore, this issue should be decided only by this Court because of the nationwide implications such a decision will have and the Court's duty to preserve judicial economy and effectiveness. This legal question directly impacts the sovereignty of the states as imparted on them through the Equal Footing Doctrine and also takes issue with the federal government's vast expansion of the Constitution's Property Clause.

The extensive federal ownership of unappropriated public land significantly limits the states' ability to exercise their sovereign powers, which in turn hinders county

governments in the ability to collect revenue including property taxes critical for funding public services like education and infrastructure, restricts the state and local governments' ability to effectively manage natural resources, and complicates efforts to mitigate wildfires by reducing local control over land management practices on the unappropriated lands. A state and county's ability to exercise eminent domain is also constrained, further restricting infrastructure development and growth. This usurpation of state sovereignty by the federal government negatively impacts *amici* and represents an ongoing disregard for the United States Constitution.

ARGUMENT

A. The claims and issues raised by the State of Utah warrant the exercise of this Court's original jurisdiction.

Both the Constitution and federal statute grant the Supreme Court the original jurisdiction to hear cases involving disputes between a state and the federal government. *See* U.S. Const. art. III, § 2, cl. 2 (“In all Cases . . . in which a State shall be Party, the Supreme Court shall have original Jurisdiction.”); 28 U.S.C. § 1251 (“The Supreme Court shall have original but not exclusive jurisdiction of . . . all controversies between the United States and a State.”). Although, the Court has stated that it “seek[s] to exercise [its] original jurisdiction sparingly,” to determine whether original jurisdiction is “appropriate,” the Court considers (1) the nature of the claim, “focusing on the seriousness and dignity of the claim,” and (2) whether the issue can be resolved in another forum. *See United States v. Nevada*, 412 U.S. 534, 538 (1973); *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992).

i. The nature of Utah’s claim is serious and necessitates a level of legal analysis that the Supreme Court is uniquely qualified to address.

The Court’s “original jurisdiction is limited to high claims affecting state sovereignty.” *South Carolina v. North Carolina*, 558 U.S. 256, 278 (2010) (Roberts, C.J., concurring in part and dissenting in part); *see also South Carolina v. Regan*, 465 U.S. 367, 372, 382 (1984) (holding that it was “appropriate for [the Court] to exercise its discretion in favor of hearing the case” when the state raises a question that allegedly “destroy[ed] [its] freedom” and altered a power that is “essential to the maintenance of its separate and independent existence”). The Court’s original jurisdiction “was granted to provide a forum for the peaceful resolution of weighty controversies involving the States.” *See id.* at 277. *See also Ohio v. Wyandotte Chems. Corp.*, 401 U.S. 493, 497-98 (1971).

As discussed in more detail below, the federal government’s perpetual ownership of public lands greatly hinders state sovereignty under the Equal Footing Doctrine and the Property Clause and is exactly the reason that this Court should hear this case. Utah seeks the Court’s resolution of a purely legal issue: whether the federal government’s perpetual ownership of unappropriated land is constitutional. In *Wyandotte Chemicals Corporation*, the Court declined to exercise original jurisdiction because the facts were in dispute rather than the law. *See* 401 U.S. at 503. That is not the case here. Instead, the Court is being “called upon by this lawsuit to resolve difficult [and] important problems of federal law.” *Id.* at 504. Utah’s claim does not ask the Court to resolve a factual dispute; it requests that the

Court apply its expertise in constitutional law to address deep-rooted issues of state sovereignty. The claim is not “noisome, vexatious, or unfamiliar;” rather, it “further[s] the assumptions and value choices that underlie the current role of this Court in the federal system.” *See id.* at 499. The balance of power between the states and federal government is a fundamental principle of the Constitution; thus, the seriousness and dignity of Utah’s claim warrants the Court’s exercise of original jurisdiction.

ii. The Supreme Court is best equipped to hear this case, as no other forum can resolve Utah’s claims efficiently.

While the Court may have discretion in determining whether to exercise original jurisdiction, the Court “exercise[s] that discretion with an eye to promoting the most effective functioning of this Court within the overall federal system.” *Texas v. New Mexico*, 462 U.S. 554, 570 (1983). Not only is this Court uniquely positioned to provide a definitive decision on a long asked constitutional question, but by accepting original jurisdiction, the Court will also preserve judicial economy. If Utah were to file a suit in federal district court, it will inevitably be appealed no matter who prevails, resulting in years of appeals for a constitutional question that should only truly be decided by this Court in the first place. The legal question at issue has deep constitutional implications and offers an opportunity for this Court to resolve what may be the most outrageous example of federal encroachment on state sovereignty yet to be presented.

Notably, the Tenth Circuit has already signaled that it feels compelled to maintain the *status quo*, despite the questionable nature of this interpretation. For example,

the Tenth Circuit has heard cases that underscore how excessive federal ownership, and control has impaired New Mexico's ability to regulate and manage its own land and resources. See *United States v. Bd. of Cnty. Comm'rs of Cnty of Otero*, 843 F.3d 1208, 1209 (10th Cir. 2016)³ (highlighting the harm “New Mexico has suffered from major fires originating on federal land within the state” and the state legislature’s concern about the “inaction on the part of the Forest Service to appropriately reduce, if not remove, the risk to the lives and property of the citizens of New Mexico”); *Wyoming v. United States*, 279 F.3d 1214, 1219, 1240 (10th Cir. 2002) (describing Wyoming’s challenges in protecting its cattle industry from disease outbreaks and noting that “[t]he [United States Fish and Wildlife Service’s] apparent indifference to the State of Wyoming’s problem and the State’s insistence of a ‘sovereign right’ to manage wildlife on the [National Wildlife Refuge] do little to promote ‘cooperative federalism’”); *New Mexico Dep’t of Game & Fish v. United States Dep’t of the Interior*, 854 F.3d 1236, 1250-51 (10th Cir. 2017) (highlighting the New Mexico Department of Game and Fish’s difficulties in managing its own conservation and management efforts due to the federal government’s apparent unwillingness to continue collaborating with the state on permits for releasing wolves). While these cases primarily concern appropriated federal land, the Tenth Circuit has shown reluctance in deciding issues that involve the erosion of state sovereignty resulting from extensive federal control, even if the precedent is founded on “questionable logic or history.” See *Bd. Of Cnty. Comm'rs of Cnty of Otero*, 843 F.3d at 1214.

3. Otero County, New Mexico, the Defendant/Appellant in the above cited case, is also a member of *amici* Coalition of Counties.

It is counterproductive for Utah to pursue this case through the Tenth Circuit, and even more so for other states and counties like the Arizona *amici* to be forced to raise the same issue in the Ninth Circuit or elsewhere. This scenario risks creating circuit splits and obviously fails to promote “the most effective functioning of . . . the overall federal system.” *See Texas*, 462 U.S. at 570. The district and circuit courts do not provide an “adequate forum in which to settle this claim.” *Nevada*, 412 U.S. at 538. In the interest of cooperative federalism and efficiency, the Court should exercise its original jurisdiction and grant leave for Utah to file a bill of complaint.

B. Utah’s claims are meritorious and deeply rooted in the fundamental principles of federalism that the Constitution aims to protect.

Although the issue has been raised, the Supreme Court has never resolved the constitutionality of the federal government’s permanent retention of unappropriated public lands under the Equal Footing Doctrine, which asserts that all states should have the same rights as the original thirteen colonies, the Necessary and Proper Clause, which limits the federal government’s power to the performance of its enumerated functions, and the Property Clause, which delineates Congress’s authority to dispose of public lands. The issues raised by the State of Utah are rooted in the fundamental principles of federalism and the balance of power between state and federal governments.

i. The Equal Footing Doctrine supports the conclusion that the federal government cannot indefinitely retain unappropriated lands.

A long-established principle of constitutional law is the Equal Footing Doctrine, which stands for the proposition that all states are to be admitted into the United States of America on equal footing with the thirteen colonies that made up the original states. Numerous cases have considered the Equal Footing Doctrine, including in determining the ownership of specific lands situated in and around waterways, the ability of Congress to impose restrictions upon new states, and the impact of the doctrine on the diversity between states. *See Pollard v. Hagan*, 44 U.S. 212 (1845) (determining that navigable water ways and the land underlying same belong to the states under the Equal Footing Doctrine); *Coyle v. Smith*, 221 U.S. 559 (1911) (stating that a new state may not be required to bargain away its “equal footing” in order to achieve statehood); *U.S. v. Gardner*, 107 F.3d 1314 (9th Cir. 1997), *cert. denied*, 522 U.S. 907 (1997) (holding that the Equal Footing Doctrine does not apply to economic or physical characteristics of the states); *see also U.S. v. State of Texas*, 339 U.S. 707, 716 (1950).⁴ In *Pollard*, the Supreme

4. As will be discussed *infra*, equal footing as related to “economic stature or characteristics” refers to whether the States are equal in “area, location, geology, and latitude” which has created great diversity in the economic aspects of the several States. “The requirement of equal footing was designed not to wipe out those diversities.” *U.S. v. State of Texas*, 339 U.S. at 716. Clearly not all States within the union contain equal physical characteristics. Because of the difference in these physical characteristics, *Amici* do not argue that the Equal Footing Doctrine ought to apply to make New Mexico or Arizona the same economically as Maryland, but instead that the federal government’s decision to withhold

Court clearly stated that every state added to the union has the right to “exercise all the powers of government, which belong to and may be exercised by the original states of the union, [and] must be admitted, and remain unquestioned, except so far as they are, *temporarily, deprived of control over the public lands.*” (emphasis added). *See Pollard*, 44 U.S. at 224. *Pollard* goes on to explain that a state is “entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent” as the original states. *See id.* at 228-29. This idea is further expressed in *Coyle* stating:

The plain deduction from [*Pollard*] is that when a new state is admitted into the Union, it is so admitted with all of the powers of sovereignty and jurisdiction which pertain to the original states, and that such powers may not be constitutionally diminished, impaired, or shorn away by any conditions, compacts, or stipulations embraced in the act under which the new state came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission.

Coyle, 221 U.S. at 573 (discussing *Pollard*, 44 U.S. 212 (1845)).

Nonetheless, in recent years, the Equal Footing Doctrine seems to have lost its footing, or at least its equality, particularly as it relates to public lands in western

from disposal of unappropriated lands within the western states, thereby eliminating the taxation and management of them at the local level, violates the Equal Footing Doctrine.

states. Western states such as New Mexico and Arizona are constantly battling with the federal government over management of public lands and the uses on those public lands. Furthermore, the federal government's exercise of authority over these public lands inhibits the states' ability to allow the use of eminent domain, tax such lands as private property to pay for public services in the counties and enforce their other police powers.

When states were added to the Union, the federal government retained title to unappropriated lands within a state's borders. *See Gardner*, 107 F.3d at 1318. In many cases, these lands became settled under the homestead acts and other various laws, so the federal government came to own little land in many states unless it was Congressionally designated for specific uses. These private lands are fully subject to the laws within their respective states, including eminent domain, taxation, and laws created under a state's police powers. However, in western states like New Mexico and Arizona, vast portions of the land in their borders were never appropriated either through a Congressional Act or privatized through the numerous "homestead statutes"⁵ and in 1976 Congress passed the Federal Lands Policy and Management Act that prevented these lands from ever being privatized. *See* 43 U.S.C. § 1783. As a result, 38.6% of New Mexico and 31.7% of Arizona remain federally managed. *See* FEDERAL LAND OWNERSHIP at 7-8.

While other states may exercise their sovereignty over the private lands within their borders, states like

5. Examples of the homestead statutes include 43 U.S.C. ch. 7, 12 Stat. § 392 (1862) and similar acts.

New Mexico and Arizona may only truly exercise their sovereignty over a relatively small portion of their states. For example, they may not exercise eminent domain over the unappropriated lands, hindering their ability to further the interests of their states. Like Utah, New Mexico and Arizona are also limited in their ability to manage the use of these lands to prevent catastrophic wildfire that can destroy their communities and private properties. *See e.g.*, Tori B. Powell, *Biden approves disaster declaration for massive New Mexico wildfires that have forced thousands to evacuate*, CBS NEWS (May 5, 2022, 1:40 PM) <https://www.cbsnews.com/news/new-mexico-wildfires-evacuations-michelle-lujan-grisham-disaster-declaration/> (covering the Calf Canyon/Hermits Peak fire that burned 165,276 acres in New Mexico in 2022, causing the evacuation of 6,000 people and burned 166 homes and businesses).

All of these things are a great affront to the so-called equal “power, dignity, and authority” under the Equal Footing Doctrine. *See Coyle*, 221 U.S. at 567. The state borders might as well be redrawn to exclude the unappropriated public lands for all the more sovereignty New Mexico and Arizona are currently able to exercise over them. However, much like the current state of affairs, such a redistricting would only continue to tie the hands of the state governments and prevent them from adequately serving the residents of their states. The current inability of Arizona and New Mexico to exert their sovereignty and jurisdiction over all unappropriated lands within their borders is unacceptable. The powers being exercised over public lands by the federal government were never delegated to it by the Constitution and should thus be returned to states. *See id.* (“This Union’ was and is a union of states, equal in power, dignity, and authority,

each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.”).

ii. The Necessary and Proper Clause does not extend to powers not vested in the U.S. Constitution nor does it extend the authority of Property Clause.

While the Equal Footing Doctrine guarantees equal rights among the states, an additional provision in the Constitution explicitly limits the authority of Congress in order to protect those rights. The Necessary and Proper Clause allows Congress to make only the “laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution. . . .” *See* U.S. Const. art. I, § 8. This Clause authorizes Congress only to have the power to write laws that are necessary and proper for executing the *vested* powers given to Congress in Article I. If a Congressional Act does not further one of the enumerated powers within the U.S. Constitution, then it cannot be justified under the Necessary and Proper Clause. *See Gonzales v. Raich*, 545 U.S. 1, 22 (2005) (recognizing that the regulation of an intrastate activity is purely incidental, so it cannot be regulated under the Necessary and Proper Clause); *Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services*, 780 F.Supp.2d 1256 (N.D. Fla. 2011) (agreeing that the Necessary and Proper Clause is not an independent source of power, rather it is a caveat that the Congress possesses the means to carry out the specifically granted powers).

The Necessary and Proper Clause was a point of contention at the Virginia Convention as the Federalists

debated over whether the Clause gave too much power to the federal government. The debate concluded that “[t]his clause only enables [the federal government] to carry into execution the powers given to them but gives them no additional power.” See Randy E. Barnett, *The Original Meaning of the Necessary and Proper Clause*, 6 U PA. J. CONST. L. 183, 186 (2003) (quoting 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA, in 1787, at 246 (Jonathan Elliot ed., rev. 2d ed. 1941) (1836)).

Additionally, the power on which the federal government seems to rely to indefinitely retain unappropriated lands comes from Article IV of the U.S. Constitution—the Property Clause. See *U.S. v. City and County of San Francisco* 60 S. Ct. 749 (1940) (claiming that the federal power over public land was entrusted to Congress without limitation). Under the Property Clause, the federal government has the authority to “dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . . .” See U.S. Const. art. IV, § 3, cl. 2. However, it was never intended that the federal government hold the land indefinitely and it was certainly not intended that the federal government hold any power “without limitation” as evidenced by the debates occurring at the time the Necessary and Proper Clause was adopted. Rather, James Madison argued that “the sweeping [Necessary and Proper Clause] . . . only extended to the enumerated powers. Should Congress attempt to extend it to any power not enumerated, it would not be warranted by the clause.” See Barnett, at 186 (quoting 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE

FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA, in 1787, at 455 (Jonathan Elliot ed., rev. 2d ed. 1941) (1836)).

When the Property Clause is read in conjunction with the Necessary and Proper Clause, it is apparent that the federal government may only hold land in order to carry out its constitutionally enumerated powers. *See Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB, 2024 WL 899372, *10 (N.D. Ala. 2024) (Clarifying that the Necessary and Proper Clause only gives Congress authority over powers involved in the Constitution but does not grant them any substantive independent powers). The powers enumerated under the Property Clause do not include the federal government indefinitely retaining ownership of unappropriated lands for purposes unknown. The federal government should not be permitted to expand its powers beyond the “disposal” of public lands by claiming unlimited expansion of the constraints in Necessary and Proper Clause.

C. Counties like *Amici* members are directly and specifically impacted by the failure to constrain the federal power over unappropriated public lands.

The consequences of the federal government’s unlimited control of the unappropriated public lands have real and painful consequences for the *amici* and their members. For example, a study conducted by the Interagency Federal Wildland Fire Policy Review Working Group in 2001 highlighted the unclear and mixed responses of the federal agencies in the attempt to control wildland fire. *See* NATIONAL INTERAGENCY FIRE CENTER, REVIEW AND UPDATE OF THE 1995 FEDERAL WILDLAND FIRE

MANAGEMENT POLICY (2001). As the Policy makes clear, wildland fires on unappropriated lands are managed by the federal government/Bureau of Land Management. County and state government response—which is often closer to those fires—may only act at the federal government’s agreement, even when thousands of acres are burning.

Payment in lieu of taxes (PILT) is another program, created by Congress that attempts, but fails, to make up for the “Equal Footing” that was created by having significant acreage retained by the federal government as unappropriated lands. PILT provides compensation for certain “entitlement lands” within a state’s borders that are exempt from state and local taxes. *See* 31 U.S.C. § 6901 *et seq.* Entitlement land is defined as “land owned by the United States Government;” these include most federal lands administered by agencies under the Department of the Interior (DOI), including the BLM. *See* 31 U.S.C. § 6901(1); *see also* CAROL H. VINCENT, CONG. RESEARCH SERV., R46260, THE PAYMENT IN LIEU OF TAXES (PILT) PROGRAM: AN OVERVIEW 1 (2023) [hereinafter PILT PROGRAM OVERVIEW]. PILT was enacted in 1976 in response to a shift in policy through the passage of the Federal Land Policy and Management Act (FLPMA). 43 U.S.C. § 1701 *et seq.* Among other things, FLPMA shifted federal policy from prioritizing *disposal* of public lands through various homestead and similar acts (in which public land ownership was considered to be temporary) to prioritizing *retention* of public lands indefinitely. *See* PILT PROGRAM OVERVIEW at 1. “Along with this shift came the understanding that, because these lands were exempt from state and local taxation and were unlikely to return to the tax base in the foreseeable future, some

compensation should be provided to the impacted local governments.” *Id.*

PILT payments differ, depending on the percent of certain entitlement lands (i.e., unappropriated lands) within a state. Under 31 U.S.C. § 6902, the Secretary of the Interior is required to make payment to local governments in whose jurisdiction entitlement/unappropriated lands are located, but local governments are limited as to the entitlement lands for which they may receive payments. The Secretary uses several considerations to determine the amount of payments, including the number of eligible entitlement acres present within a local government’s jurisdiction, variable per acre payments, a maximum payment based on the population of the area, and prior-year payments made to the local governments pursuant to certain other federal compensation programs.⁶ *See* PILT PROGRAM OVERVIEW at 7. However, the most notable consideration is the amount appropriated to the PILT program by Congress. *See id.*

PILT is funded solely by periodic appropriations from Congress, so it is never a guarantee that local governments will receive their promised annual payments. *See id.* at 12. Even if funds are generally appropriated by Congress, these appropriated funds are not always adequate to cover the statutory calculation determined

6. For example, states and counties which do not have unappropriated or entitlement lands can tax private property AND receive compensation from numerous federal programs, but counties with unappropriated lands cannot receive equal consideration for such funding. This is clearly an example where counties with unappropriated lands are not on equal footing with counties whose boundaries do not include these lands.

by the considerations discussed above, and even in years where the appropriations match the calculation, some of those funds may be earmarked for other things like administrative expenses. *See id.* As a result, counties often do not receive their full authorized amount. *See id.* For example, in 2017, the *amici* member counties in Arizona were given \$11,954,029. In 2018, the *amici* member counties from Arizona were given \$12,497,896. Thus, between 2017 and 2018 the state of Arizona's PILT payments had a difference of \$543,867. *See* U.S. DEP'T OF THE INTERIOR, NATIONAL SUMMARY: FISCAL YEAR 2017 PAYMENTS IN LIEU OF TAXES 28; U.S. DEP'T OF THE INTERIOR, NATIONAL SUMMARY: FISCAL YEAR 2018 PAYMENTS IN LIEU OF TAXES 30 (providing total amounts paid in Apache, Cochise, Gila, Graham, and Navajo counties).

Consistency in payment relies on sufficient funding, which, if available, provides each county with their authorized amount. However, if funding is insufficient, each local government receives a prorated payment based on the funding that has been appropriated. In the case of the *amici* members, it is extremely difficult for counties to create remotely reliable budgets for the upcoming year if they must constantly guess if there will be enough funds in the PILT program to cover the payments to which they are entitled. In addition to being inconsistent, the payments have also been known to be late. If a payment is received late, the county expecting that payment is forced to pull that money out of its own limited resources or cut its budget by the amount of the authorized PILT payment. There have also been years where states like New Mexico and Arizona received money under mandatory spending, but the amount was still inconsistent with the year before. For example, in 2024 the *amici* counties in New Mexico

received \$22,752,116 through PILT. *See* U.S. DEP'T OF THE INTERIOR, NATIONAL SUMMARY: FISCAL YEAR 2024 PAYMENTS IN LIEU OF TAXES at 77 [hereinafter FISCAL YEAR 2024 PILT REPORT] (providing total amounts paid in Catron, Chaves, Eddy, Hidalgo, Lea, Luna, Mckinley, Otero, Roosevelt, Sierra, and Socorro counties). In 2023 though they received \$21,433,883. *See* U.S. DEP'T OF THE INTERIOR, NATIONAL SUMMARY: FISCAL YEAR 2023 PAYMENTS IN LIEU OF TAXES 77 [hereinafter FISCAL YEAR 2023 PILT REPORT].

Socorro County, New Mexico, a member of *Amici*, is comprised of 4,255,360 acres of land. The BLM manages 1,561,055 of these unappropriated acres, or roughly 37% of the county. *See* FISCAL YEAR 2024 PILT REPORT at 172. Socorro County brings in an average of \$3.3 million per year in property tax revenue. *See* E-mail from Andrew Lotrich, County Manager Socorro County, NM attached as Appendix (App.) A, p. 1a. If Socorro County had the ability to tax the unappropriated or entitlement land within its jurisdiction, its tax revenue would increase by nearly \$2 million, resulting in an approximate revenue of \$5.3 million per year. In the 2023-2024 tax year, DOI paid Socorro County \$1,610,953, or approximately \$400,000 less than the potential property tax revenue. *See* FISCAL YEAR 2023 PILT REPORT at 77. In Socorro County, PILT is utilized as operational funding for its general fund, including funding various departments and services. The tax revenue lost by the County's inability to tax unappropriated lands would greatly assist funding such government activities. In addition, the ability to tax these lands would provide a much more consistent and reliable revenue source for the County.

Additionally, although Socorro County is prohibited from taxing unappropriated BLM land within its own

jurisdiction, it is still required to maintain the roads on these lands. From 1996 to present, the county has been responsible for maintaining BLM roads—over 150 miles—without any form of compensation. PILT currently covers approximately 20% of Socorro County’s budgeted revenue, so when these payments are late or even worse, decreased as a result of lack of appropriated funds, the county is forced to tap into precious cash reserves. *See* App. A, p. 4a. If these reserves are ever depleted, Socorro County will have no choice but to eliminate 20% of its budgeted expenditures or issue a major hike in tax rates for the private property owners in the county. Inconsistency, late payments, and insufficient funds have a negative impact on the counties receiving PILT payments and all who reside within them.

Chaves County, New Mexico, another *Amici* member, is comprised of 3,883,008 acres. 1,162,588 of those acres are managed by the BLM. FISCAL YEAR 2024 PILT REPORT at 172. In the 2023-2024 tax year, Chaves County received \$3.7 million from the PILT program to accommodate for the public and federal land within its jurisdiction. FISCAL YEAR 2023 PILT REPORT at 77. These PILT payments account for approximately 15% of the county’s annual budget. When payments are late or decreased as a result of inadequate funding, the county must freeze funding for non-reoccurring projects and severely cut funding for operational expenses. *See* App. B at p. 8a.

CONCLUSION

Utah's Bill of Complaint seeks to present an important legal issue to this Court that greatly impacts the sovereignty of states within this great nation. The question of the federal government's perpetual ownership of unappropriated lands has been asserted on several other occasions, but as of yet there has been no definitive answer. It is time that this question is resolved, and it would be a great injustice to leave it unanswered yet again.

Therefore, for the reasons set forth in this brief, the *Amici*, Coalition of Arizona/New Mexico Counties for Stable Economic Growth, New Mexico Federal Lands Council, and New Mexico Farm and Livestock Bureau, hereby request that this Court grant the State of Utah's Motion for *Leave to File Bill of Complaint*.

Respectfully submitted,

KAREN BUDD-FALEN
Counsel of Record
BUDD-FALEN LAW OFFICES, L.L.C.
P.O. Box 346
300 East 18th Street
Cheyenne, WY 82003
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Counsel for Amici Curiae

APPENDIX

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**APPENDIX A — RELEVANT E-MAILS
FROM RACHAEL BUZANOWSKI**

Rachael Buzanowski

From: Karen Budd-Falen
Sent: Tuesday, October 15, 2024 9:06 AM
To: Rachael Buzanowski
Subject: FW: Answers to Questions for Utah Supreme
Court Amicus

Karen Budd Falen
Budd Falen Law Offices L.L.C.
P.O. Box 346
300 East 18th Street
Cheyenne, Wyoming 82003
(307) 632-5105
[REDACTED]

From: Karen Budd-Falen
Sent: Monday, September 30, 2024 3:07 PM
To: Tanna Anderson [REDACTED]
Subject: FW: Answers to Questions for Utah Supreme
Court Amicus

Karen Budd Falen
Budd Falen Law Offices L.L.C.
P.O. Box 346
300 East 18th Street
Cheyenne, Wyoming 82003
(307) 632-5105
[REDACTED]

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Appendix A

From: Andrew Lotrich [REDACTED]
Sent: Monday, September 30, 2024 3:04 PM
To: Karen Budd-Falen [REDACTED]
Cc: Ray Martinez [REDACTED];
Adren Nance [REDACTED]
Subject: Answers to Questions for Utah Supreme
Court Amicus

Hi Karen –

Please see below for the answers to your questions from Socorro County. Please let me know if you have any additional questions or need any additional information.

Thank you.

1. How much does each impacted county government spend on roads, schools, emergency services each year? The years are 2024 and 2023, 2018 and 2017 and 2010 and 2009.
 - a. 2009-2010
 - i. Our financial records within the office start at 2012.
 - b. 2017-2018
 - i. Roads: \$1,268,952.40
 - ii. Schools: N/A
 - iii. Emergency Services: \$372,247.31
 - iv. Sheriff: \$1,273,849.93
 - v. Fire: \$606,698.82

Appendix A

- c. 2023-2024
 - i. Roads: \$1,580,066.98
 - ii. Schools: N/A
 - iii. Emergency Services: \$476,356.70
 - iv. Sheriff: \$1,587,625.27
 - v. Fire: \$728,232.04
2. How much revenue does your county receive in terms of taxes for various natural resources industries such as grazing, mining, logging, recreation?
 - a. Socorro County receives roughly \$20,200 on average from USDA Taylor Grazing Act. This funding is utilized to then pay the USDA in order to aid Socorro County with wildlife & stray animals.
 - b. General Fund receives roughly \$1.9M on average in GRT which, along with PILT & Property Taxes, funds our General Fund services such as our Clerk, Treasurer, Sheriff, Manager, Assessor, Emergency, Probate, & Technology.
3. What % of each county's budget is covered by PILT? In years of huge PILT payment shortfalls, what does the county do to make up the shortfall?
 - a. Socorro County IS reliant on PILT funding to meet its budgeted obligations. PILT averages about \$1.6M a year in Socorro County General Fund revenues and accounts for about 20% of budgeted

Appendix A

revenue. Socorro County relies primarily on cash savings to make up for periods when PILT is late, without cash savings, Socorro County would have to eliminate 20% of its budgeted expenditures.

4. What does the counties spend their PILT payments on and are there requirements on reporting or spending attached to getting PILT funds?
 - a. PILT is utilized within Socorro County as operational funding for our General Fund. These funds operate departments/services such as our County Commissioners Office, Facilities Department, County Clerk, Bureau of Elections, County Treasurer, Sheriff's Department, County Manager, County Assessor, Emergency Services, Probate Judge, & Technology.
5. How much does your county pay to conduct emergency services (like search and rescue of firefighting) on the BLM lands?
 - a. Socorro County operates a few emergency response departments which are the Sheriff's Department, Emergency Services, and Volunteer Fire Departments. Departments and resources are responsive to the entirety of Socorro County through dispatch services.

Appendix A

6. Have the counties done any calculations on lost business opportunities because of the amount of BLM lands in the county?
 - a. County has not done any in-depth research regarding lost business opportunities; however, we can calculate a loss of revenue on property taxes that are unavailable due to BLM or Federal claim to property that prevents those collections.

7. Do you know what the circulating dollars are from local livestock grazing? Has the New Mexico Range Improvement Task Force done that calculation for other industries like oil and gas or timber?
 - a. Socorro County does not have available any local livestock grazing dollars outside of USDA Taylor Grazing Act which is paid directly back to USDA for a Service Agreement with Socorro County to aid in management of wildlife & stray animals. To my knowledge, nothing exists for oil/gas/timber in Socorro County.

Andrew "Andy" Lotrich
Socorro County Manager
198 Neel Ave.
Socorro, NM 87801
Office: 575-835-0589
Cell: 575-517-0204

**APPENDIX B — RELEVANT E-MAILS
FROM RACHAEL BUZANOWSKI**

Rachael Buzanowski

From: Karen Budd-Falen
Sent: Tuesday, October 15, 2024 9:06 AM
To: Rachael Buzanowski
Subject: FW: Questions for Utah Supreme Court amicus

Importance: High

Karen Budd Falen
Budd Falen Law Offices L.L.C.
P.O. Box 346
300 East 18th Street
Cheyenne, Wyoming 82003
(307) 632-5105
[REDACTED]

From: Karen Budd-Falen
Sent: Monday, October 7, 2024 11:36 AM
To: Tanna Anderson [REDACTED]; Rachael
Buzanowski [REDACTED]; Sarah Falen
[REDACTED]
Subject: FW: Questions for Utah Supreme Court amicus
Importance: High

Karen Budd Falen
Budd Falen Law Offices L.L.C.
P.O. Box 346
300 East 18th Street
Cheyenne, Wyoming 82003
(307) 632-5105
[REDACTED]

7a

Appendix B

From: Howard Hutchinson
Sent: Monday, October 7, 2024 11:31 AM
To: Karen Budd-Falen
Subject: FW: Questions for Utah Supreme Court amicus
Importance: High

Dear Karen,

Please see the answers to your questions below from Chaves County.

Howard

From: Bill Williams [REDACTED]
Date: Monday, October 7, 2024 at 10:49 AM
To: [REDACTED]
Subject: FW: Questions for Utah Supreme Court amicus

Howard,

Thanks for all that you do for our Counties.

Bill Williams
County Manager
Chaves County
PO Box 1817
Roswell, NM 88202-1817

Office: 575-624-6602
Fax: 575-624-6659
Email: [REDACTED]

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Appendix B

From: Anabel Barraza [REDACTED]
Sent: Friday, October 4, 2024 1:06 PM
To: Bill Williams [REDACTED]
Subject: RE: Questions for Utah Supreme Court amicus

Hi Bill, Here you go!

1. How much does each impacted county government spend on roads, schools, emergency services each year? The years are 2024 and 2023, 2018 and 2017 and 2010 and 2009.

Did not have 2009-2010 on hand

**2017-2018 – County Government – \$21,451,881.68 Roads
- \$4,686,469.19 Emergency Services - \$2,086,620.26**

**2023-2024 – County Government – \$26,757,378.76 Roads
- \$4,998,623.67 Emergency Services - \$1,077,022.67**

2. How much revenue does your county receive in terms of taxes for various natural resources industries such as grazing, mining, logging, recreation?

\$40,000.00

3. What % of each county's budget is covered by PILT? In years of huge PILT payment shortfalls, what does the county do to make up the shortfall?

15% of Chaves County Government for FY 24

Appendix B

Strategy when shortfalls: Freeze non-reoccurring projects, expenses, etc. or cut on capital outlay to fund operational expenses

4. What do the counties spend their PILT payments on and are there requirements on reporting or spending attached to getting PILT funds?

Operational expense for County Government. No requirements for reporting or spending PILT funds, these funds are part of the general fund revenues that are approved by Commission to use for operating expenses.

5. How much does your county pay to conduct emergency services (like search and rescue or firefighting) on the BLM lands?

Do not have this information on file.

6. Have the counties done any calculations on lost business opportunities because of the amount of BLM lands in the county?

Currently working with Assessor to get calculations, but as of today do not have this information on hand.

7. Do you know what the circulating dollars are from local livestock grazing? Has the New Mexico Range

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Appendix B

Improvement Task Force done that calculation for other industries like oil and gas or timber?

Do not have this information on file. Not aware of any calculation for oil and gas or timber.

Anabel Barraza
CFO, CPO

From: Bill Williams [REDACTED]
Sent: Thursday, October 3, 2024 9:15 AM
To: Anabel Barraza <anabel.barraza@chavescounty.gov>
Subject: FW: Questions for Utah Supreme Court amicus
Importance: High

Anabel, could you please provide answers to the questions below? I will send them back through Howard at AZ/NM Counties. Thank you Bill

From: Karen Budd-Falen [REDACTED] >
Date: Tuesday, September 24, 2024 at 2:33 PM
To: Howard Hutchinson [REDACTED],
"Caren Cowan ([REDACTED])"
<[REDACTED]>
Cc: Sarah Falen <[REDACTED]>, Tanna
Anderson <[REDACTED]>
Subject: Questions for Utah Supreme Court amicus

Thanks for the conversation. Here are some questions we had:

Appendix B

1. How much does each impacted county government spend on roads, schools, emergency services each year? The years are 2024 and 2023, 2018 and 2017 and 2010 and 2009.
2. How much revenue does your county receive in terms of taxes for various natural resources industries such as grazing, mining, logging, recreation?
3. What % of each county's budget is covered by PILT? In years of huge PILT payment shortfalls, what does the county do to make up the shortfall?
4. What does the counties spend their PILT payments on and are there requirements on reporting or spending attached to getting PILT funds?
5. How much does your county pay to conduct emergency services (like search and rescue of firefighting) on the BLM lands?
6. Have the counties done any calculations on lost business opportunities because of the amount of BLM lands in the county?
7. Do you know what the circulating dollars are from local livestock grazing? Has the New Mexico Range Improvement Task Force done that calculation for other industries like oil and gas or timber?

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Appendix B

Thanks

Karen Budd Falen
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