No. 22O160, Original

In The
Supreme Court of the United States

STATE OF UTAH,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

BRIEF OF *AMICI CURIAE* AMERICAN LANDS COUNCIL *ET AL.* IN SUPPORT OF PLAINTIFF STATE OF UTAH'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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BRIEF OF *AMICI CURIAE* SUPPORTING PLAINTIFF THE STATE OF UTAH

INTEREST OF THE AMICI CURIAE

Amici Curiae American Lands Council ("ALC"), Association of Mature American Citizens (AMAC) Action; Beaver County, UT; Carbon County, UT; Chaves County, NM; City of St. George, UT; Committee For A Constructive Tomorrow (CFACT); Custer County, ID; Elko County, NV; Five County Association of Governments, UT; Hurricane City, UT; Idaho County, ID; Idaho Freedom Caucus; Iron County, UT; Lander County, NV; Lincoln County, NM; Lincoln County, NV; Marion County, OR; Mojave County, AZ; Montana Freedom Caucus; Piute County, UT; Santa Clara City, UT; Tri State ATV Club; Union County, NM; United Property Owners of Montana (UPOM); Utah Cattlemens Association; Washington City, UT; and Wizards Motorcycle Club respectfully submits this brief in support of the Plaintiff State of Utah's Motion for Leave to File Bill of Complaint.[1,2]

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1 Supreme Court Rule 37.6 Statement: No counsel for a party authored this brief in whole or in part, and no counsel for a party (nor a party itself) made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici* or their counsel made a monetary contribution to its preparation or submission.

2 Supreme Court Rule 37.2 statement: Counsel of record for both parties received timely notice under Supreme Court Rule 37.2 of *amici curiae*'s intention to file this brief.

ALC is a national nonprofit organization whose directors, officers, and membership include state and local elected officials, public land producers, environ ment and natural resource experts, outdoor recreationists, sportsmen, and other public land users from throughout the United States.

ALC seeks to ensure public lands are lawfully managed in a way that supports the environment, abundant outdoor recreation, and safe, vibrant communities. ALC recognizes the critical need to restore the constitutional right of States to govern the public lands within their borders. ALC supports appropriate legal action, including Plaintiff's Bill of Complaint, to ensure the proper constitutional balance between the federal government and the States.

The additional *Amici* share ALC's interest in better access, health, and/or productivity on public lands. All *Amici* submit that it is imperative that the Court answer the vital constitutional questions posed by Plaintiff because of the massive impact unconstitutional federal retention of public lands has on twelve western States, Alaska, the Dakotas and their political subdivisions.

Further, the citizens of the counties and municipalities who are also appearing as *Amici* herein are the victims of the unequal treatment of the States in which they live. They have suffered the consequences of attenuated budgets; lack of sufficient school funding; the impossibility of eminent domain actions for public facilities; inequality of political representation at the federal level; incapacity to provide housing; the inability to attract population and to attract and build business activity because of the counties' and municipalities' inability to access most

of the land within their boundaries; inability to impose property taxes on the most of the land within their jurisdictions; incapacity to build or improve roads, bridges and highways; and inability to lay telecommunications equipment and the incapacity to provide a myriad of municipal services that are routinely provided by counties and municipalities in States east of the Rocky Mountains.

SUMMARY OF ARGUMENT

The State of Utah has courageously stepped forward to right an historical and ongoing wrong; a wrong that has been allowed to warp American federalism to the detriment of 79 million residents—approximately 25% of the population of the United States—and twelve western States. It is a wrong understandable only in the context of law and history going back before the Founding. It is a constitutional wrong of monumental proportions, striking at the very heart of the equal dignity to which every single State is entitled under the Constitution, but which twelve of their number—one quarter of the nation—have been denied.

It is a wrong that has ensured that the twelve western States have been permanently politically hobbled in comparison to their sister States to the east and has, relatively speaking, impoverished their citizens and denied them the full benefits of citizenship that residents of the eastern States take for granted.

It is a wrong this Court has consistently found does violence to the Constitution, going back to the re-adoption of the Northwest Ordinance by the first Congress and decisions of this Court from as far back as 1796, under *Ware v. Hylton*, 3 U.S. (Dall.) 199, 223-224 (1796), and 1845 with *Pollard's Lessee v. Hagan*, 44 U.S. 212 (1845). An unbroken line of decisions confirms these decision to the present day, (See, *Shelby County v. Holder*, 570 U.S. 529 (2013), and others). This Court has consistently ruled that the very nature of a "united" States demands Constitutional recognition that a federal system comprised

of sovereign States requires the equal dignity of the States wherein each retains the vast majority of the incidents of sovereignty inherent to independent nations.

This action will not impact Utah alone. Indeed, it does not merely affect the twelve western States that have been hobbled by this constitutional warp. All States in this Union will be impacted by a decision in Utah's favor. Western State self-reliance will result in a diminution of money transfers from eastern States to the West, used to make up for the inability of western States to fully fund education, social services, and other needful public improvements from their own resources because of their inability to tax the majority land within their boundaries and exercise eminent domain for public purposes. This will leave more money in the hands of eastern States to pursue their own goals on behalf of their citizens. Western social, cultural and political influence will increase as a more diverse population and cultural power expands in the West and affects the eastern sister States.

Utah has petitioned for leave to file a bill of complaint in this Court, invoking its constitutional right to equal treatment under the Constitution and a recognition that the permanent retention of the vast majority of land within its borders by the federal government is constitutionally infirm and must be ameliorated by a ruling from the only court with the dignity and power to do so: the Supreme Court of the United States.

Utah's petition, supported by a comprehensive memorandum of points and authorities, is a splendid rendering of the historical context under which Utah

moves herein and its brief provides a detailed recounting of the national history that resulted in the constitutional distortion Utah seeks to remedy through action in this Court. Utah's brief, clearly grounded in no small part by reliance on a study commissioned by the Utah State Legislature, the Report on which was delivered to the legislature on December 15, 2015,[3] sets forth, in detail, the Constitutional/legal bases for its claims.

The State of Idaho has also filed an *Amicus* brief to buttress the arguments presented by Utah. These *Amici*, therefore, will not repeat the arguments already brilliantly articulated by Utah and Idaho. But Utah's petition presents more than weighty issues of federalism: this wrong directly constrains the civil rights of the citizens of all twelve western States. The vast federal claims create States dominated by the Federal Government, negatively impacting the ability of the citizens of those States to self-govern in the same way that the citizens of the thirty-eight eastern States do.

The Court is uniquely positioned to correct this civil rights issue. Indeed, as discussed at length below, Utah's Bill of Complaint fits squarely within the framework set forth in Footnote 4 of *United States v. Carolene Products* (1938) for when this Court should take corrective action, because the

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[3] Ronald D. Rotunda, John W. Howard, James S. Jardine, Richard Seamon, George R. Wentz, Jr., *Legal Analysis of the Legal Consulting Services Team Prepared for the Utah Commission for the Stewardship Of Public Lands*, December 9, 2015. Utah Commission for the Stewardship of Public Lands, https://le.utah.gov/interim/2015/pdf/00005590.pdf, last accessed October 20, 2024.

Federal Government's actions target a discrete and insular minority who are denied effective political representation, making it difficult—if not impossible—for them to protect their rights through the political process.

Few claims require more serious and dignified notice than the reclamation of fundamental rights and of equal sovereignty. The *Amici* therefore respectfully urge this Court to grant Utah's Motion, exercise its original jurisdiction, and cure this inequality relegating citizens of the West to a second-class status.

ARGUMENT

I. The Subject of Utah's Motion is a Matter of Utmost Constitutional Consequence and Urgent National Impact.

The Constitution provides that "[i]n all cases affecting Ambassadors, and other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original jurisdiction."[4] 28 U.S.C. 1258 (b)(2) provides discretionary jurisdiction for controversies between the United States and a State.[5] Utah contends that this case is of such immense scope and has such national implications, that this Court should exercise its discretion to hear it directly and grant the instant motion for leave to file her complaint herein. These *Amici* agree.

The principles underlying Utah's contention are articulated clearly in *South Carolina v. Regan*, 465 U.S. 367 (1984. In that case, South Carolina invoked this Court's original jurisdiction to challenge the constitutionality of legislation that impinged on its ability to issue bonds to fund government services. That case's impact would be incomparably small compared to the issues presented herein by the State of Utah. However, this Court recognized that the scope of the issue presented by South Carolina was broad enough that it required this Court's attention. Among the factors that drove the Court to this decision was that, while the case had been brought by South Carolina, the issue impacted all fifty states,

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4 U.S. CONST, Art. III, Sec. 2, cl. 2.

5 28 U.S.C. 1258 (b)(2).

a number of which filed *amicus* briefs in support of South Carolina's position.

Likewise, while the State of Utah brings the instant case, decision in it will impact eleven other western States, as well; concerns one-third of the land mass of the United States of America; and carries broad implications for the thirty-eight other States which already exercise dominion over land within their borders, because it is those States whose citizens are taxed to support western States that have been deprived of the capacity for the same.

Utah's motion goes to the very heart of the national paradigm of the equal dignity and sovereignty of the States and to the core of a federal system of States entitled to enjoy all incidents of sovereignty, equally, as described in II(a), *infra*. Utah's motion also goes to the grave matter of the diminution of the civil rights of those citizens living in the West, addressed at length in III, *infra*.

Indeed, resolution of this case in favor of Utah will have national implications because it will enable Utah—and other western States and their various political subdivisions, like the *Amici* herein—to promote settlement and commerce; to obtain land through eminent domain to build schools, municipal buildings, hospitals and parks; to attract population and, consequently economic activity that will enrich not just the States' political subdivisions, but the States themselves.

Justice O'Connor said it best when she wrote, in her concurrence in *South Carolina v. Regan*:

> An original party establishes that a case is 'appropriate' for obligatory jurisdiction by

> demonstrating, through 'clear and convincing evidence' that it has suffered an injury of 'serious magnitude' and that otherwise will be without an alternative forum…"[6]

Surely, the divestment of a State of one of its most fundamental incidents of sovereignty qualifies as an issue of such magnitude that it demands Supreme Court attention. Indeed, no other court has the power, credibility, dignity, or national respect to address an issue this momentous with implications that are so profound as to impact one-third of the land of the United States. As competent and courageous as District and Appellate judges may be, they cannot be expected to undertake a matter of this scope when a decision could affect, but not determine, whether that decision will extend beyond the jurisdiction of those courts. This issue demands national uniformity and the only Court capable of delivering it is this one.

Although South Carolina was found to have stated a matter of sufficient magnitude, albeit, in Justice O'Connor's words "by the barest of margins", in the end, it was merely about the ability of a State to issue bonds that were exempt from taxation, and the extent to which the State could borrow to fund government. The State had other alternatives for funding. But what alternative does Utah have to make up for the drastic abridgment of its sovereignty that it raises in its motion?

Likewise, in *Mississippi v. Louisiana*, 506 U.S. 73, (1992), Justice Rehnquist clearly articulated the

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6 *South Carolina v. Regan*, 465 U.S. 367, 400, 104 S. Ct. 1107, 1126 (1984) (O'Connor, J., concurring) (internal citations omitted).

standard by which the Court should judge whether it should exercise its discretionary jurisdiction. Originally involving a real estate boundary dispute between two private landowners, the case morphed into a dispute between States and the Court was asked to exercise its original jurisdiction. In holding that it should, Justice Rehnquist wrote:

> Determining whether a case is appropriate for our original jurisdiction involves an examination of two factors. First, we look to the nature of the interest of the complaining State, focusing on the seriousness and dignity of the claim. 'The model case for innovation of this Court's original jurisdiction is a dispute between States of such seriousness that it would amount to a *casus belli* if the States were fully sovereign. Second, we explore the availability of an alternative forum in which the issue tendered can be resolved.

Id., 506 U.S. at 77, 113 S. Ct. at 553. What issue could be more serious than one of the equality of a State to her sister States? What issue could be more serious than whether an unbroken line of Supreme Court decisions confirms the equal dignity of States and their right to be treated as equally sovereign to their sister States? What could be of more consequential constitutional moment than whether the federal government has the constitutional power to withhold one-third of the land mass of the nation permanently for no purpose cognizable under the Property and Enclave Clauses? Ordered liberty is not discretionary. It is constitutionally mandatory. The Equal Footing Doctrine is over 250 years old and as

vital today as it was when first articulated under the Confederation. Nothing could be more consequential.

Is there a court capable of making a decision of such national import, especially when one considers that the States subject to the federal government's unconstitutional retention span three separate Circuit Courts of Appeals? No court, with respect to them all, has the power, credibility, or scope to rule on an issue of such national magnitude. The *Mississippi* factors virtually demand that this Court exercise its discretion to grant Utah's motion.

II. The Equal Footing Doctrine Holds That Ordered Liberty Requires That Each State Be Admitted on an Equal Footing to The Original Thirteen States.

a. The Nature of Sovereignty.

Sovereignty is that condition that generally defines the extent of the rights and privileges of national governments. The incidents of national sovereignty include, among others, dominion over all land within the nation's borders; ownership of all unappropriated land; the power of eminent domain; the power to tax land; the power to lay taxes; the authority to set or prohibit the uses of land; the power to authorize and organize the settlement of land; the right and power to engage in the environmental protection of land within its borders; the power of eminent domain for public purposes as determined by a nation in its sole discretion; the power to enact and enforce criminal laws on all territory within national borders; to

maintain a legislature, executive and a judiciary for the administration of justice based on national law.[7]

b. Devolution of Sovereignty to The Thirteen Original States.

When the thirteen British colonies in North America declared their independence from the British Crown, they became thirteen separate and independent nations, succeeding to all sovereign rights originally inhering in the Crown of England.

> In June 1776, the Convention of *Virginia formally* declared that *Virginia* was a free, sovereign and independent state; and on the 4th of *July*, 1776, following, the *United States* in Congress assembled, declared that the *Thirteen United Colonies*, free and independent states; and that as *such*, they had full power to levy war, conclude peace, etc. I consider this as a declaration not that the United Colonies, *jointly*, in a *collective* capacity, were independent states, etc., but that *each* of them was a sovereign and independent state that is, that *each* of them had a right to govern itself by its own authority and its own laws, without any control from any other power upon earth.

Ware v. Hylton, 3 U.S. (Dall.) 199, 223-224 (1796) (emphasis in original).

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[7] *Johnson and Graham's Lessee v. M'Intosh*, 21 U.S. 543, 595-596 (1823); Biersteker, Thomas; Weber, Cynthia. *State Sovereignty as Social Construct.* Cambridge Studies in International Relations 46. Cambridge University Press, 1996*; Blackstone's Commentaries, Book 1, Chapter 7.*

Among the incidents of sovereignty retained by the Crown at the time of independence was ownership of all vacant and unappropriated land in North America. *Martin v. Waddell*, 41 U.S. (16 Pet.) 367 (1842).

> In the case of *Johnson v. McIntosh*, 8 Wheat. 595, this Court said that according to the theory of the British constitution, all vacant lands are vested in the Crown, as representing the nation, and the exclusive power to grant them is admitted to reside in the Crown as a branch of the royal prerogative. And this principle is as fully recognized in America as in Great Britain; all the lands we hold were originally granted by the Crown; our whole country has been granted, and the grants purport to convey the soil as well as the right of dominion to the grantee. Here the absolute ownership is recognized as being In the Crown, and to be granted by the Crown, as the source of all title, and this extends as well to land covered by water as to the dry land; otherwise no title could be acquired to land under water.

Id. at 426.

c. The Equal Footing Doctrine.

The Equal Footing Doctrine has its roots not only in the very nature of a league of independent states, but in the Articles of Confederation and the Northwest Ordinance. On April 23, 1784, Congress, operating under the Articles of Confederation, adopted an Ordinance addressing the temporary governance

of the lands ceded by New York and Virginia, providing, in part:

> And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an *equal footing with the original States in all respects whatever*. . .[8]

As early as 1845, the Court noted the constitutional requirement that the States be equal sovereigns:

> The act of Congress of the 8th April, 1812, which admitted Louisiana into the union, acknowledged that very equality with her sovereign sisters, which is here asserted. The first section provides – 'That the said state shall be one, and is hereby declared to be one, of the United States of America, and admitted into the union on an equal footing with the original states, in all respects whatever.' It is not the mere assertion of her equality, in this clause, which establishes her equality – it only pronounces that equality which the Constitution establishes. If she be equal, however, she must be equally exempt from the legislation of Congress, past or future, as her elder sisters.[9]

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8 An Ordinance for the Government of the Territory of the United States North-West of the River Ohio, July 13, 1787, Articles of Confederation Congress. https://www.archives.gov/milestone-documents/northwest-ordinance (emphasis added).

9 *Permoli v. New Orleans*, 44 U.S. 589, 609 (1845).

Thereafter, in an unbroken line of cases stretching to the present day, the Equal Footing Doctrine has been affirmed and reaffirmed by this Court.

In the interests of economy, we will not further address this topic inasmuch as it has been exhaustively explored in Utah's moving papers. But the point of the doctrine is that it confers on successively admitted States all the incidents of sovereignty previously enjoyed by the Crown and succeeded on independence by the original thirteen States. Suffice it to say that the Equal Footing Doctrine is one of urgent constitutional moment.

III. The Vast Federal Land Claims Implicate Civil Rights.

In 1938 this Court, in a famous footnote, recognized that certain situations may call for a "correspondingly more searching judicial inquiry," specifically concerning "prejudice against discrete and insular minorities…which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4, 58 S. Ct. 778, 783 (1938) (internal citations omitted). The taking and holding of large swaths of the lands of western States has by its effects curtailed the civil rights of citizens of the West, and in particular the political processes otherwise intended to protect those rights. A suitably searching judicial inquiry is therefore required.

a. Denial of State Equal Sovereignty Injures the Rights of the States' Citizens.

Justice Anthony Kennedy once eloquently stated that the Framers had "split the atom of sovereignty." *United States Term Limits v. Thornton*, 514 U.S. 779, 838, 115 S. Ct. 1842, 1872 (1995) (Kennedy, J., concurring). Limited enumerated powers were granted to the central government while broad general powers remained with the States. The citizens of the States therefore retained a robust reservoir of rights allowing them to self-govern. Dual sovereignty serves as a critical structural protection of individual rights:

> "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power. Because the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens' daily lives are normally administered by smaller governments closer to the governed. The Framers thus ensured that powers which "in the ordinary course of affairs, concern the lives, liberties, and properties of the people" were held by governments more local and more accountable than a distant federal bureaucracy. The independent power of the States also serves as a check on the power of the Federal Government: By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.

Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 536, 132 S. Ct. 2566, 2578 (2012) (internal citations omitted).

The citizens of the western States, however, are subject to unchecked police powers wielded directly by the Federal Government in the more than two hundred million unappropriated federal lands in the West. As a result, the powers which "in the ordinary course of affairs, concern the live liberties, and properties of the people" of the western States are not "held by governments more local and more accountable than a distant federal bureaucracy." To the contrary, those powers are wielded by a tapestry of distant federal bureaucracies. One government exercises absolute power over all the concerns of public life in 46.4% of the contiguous eleven western States.[10] In that vast federal zone, federalism simply fails to protect the liberty of the individual from arbitrary power.

Elbridge Gerry warned against such a result at the Constitutional Convention when, on September 5, Madison's Notes reflect that he insisted that the state legislatures must consent to the purchase of land within a state because he "contended that this power might be made use of to enslave any particular State by buying up its territory, and that the strongholds proposed would be a means of awing

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10 Congressional Research Service, *Federal Land Ownership: Overview and Data,* R42346, February 21, 2020. https://crsreports.congress.gov/product/pdf/R/R42346.

the State into an undue obedience to the Genl. Government."[11]

Ultimately, this failure usurps from the citizens of the West effective political representation. As a result, this Court represents the final forum available to the citizens of public land states to seek corrective action.

b. The Citizens of the West are Denied the Equal Right to Raise Taxes.

Taxes are the fuel of self-governance; indeed, they are a power of "vital importance" retained by the States. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 425 (1819). Counties and States cannot levy taxes on federal lands. 43 U.S.C. § 1701(13); *Van Brocklin v. Tennessee*, 117 U.S. 151, 180, 6 S. Ct. 670, 686 (1886); *see also Irwin v. Wright*, 258 U.S. 219, 228, 42 S. Ct. 293, 297 (1922) ("[N]o State can tax the property of the United States within its limits."); *McCulloch v. Maryland*, 17 U.S. 316, 431 (1812).

In the thirty-eight eastern States that enjoy dominion over the land within their borders, the citizens can fill the coffers of their State treasury through property taxes. Over the course of time, the citizens of the thirty-eight eastern States have used this sovereign right to create corridors of commerce, compete for population with other States, and to organize themselves for success. The resulting economic growth allows them to further raise revenue to support local services and for additional public amenities.

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11 Notes of James Madison from the Constitutional Convention, Tuesday, September 5, 1787, https://avalon.law.yale.edu/18th_century/debates_905.asp.

However, the twelve western States cannot tax an average of sixty percent (60%) of the land within those States because it is claimed by the federal government.[12] As a result, the twelve western States cannot pay for the amenities associated with a vibrant, modern society.

The *Amici* herein are largely counties, local governments, and municipalities whose interests, as a practical matter, are most impacted. It is they who establish and fund schools, municipal facilities and hospitals. It is they who cannot obtain land on which to construct those schools and municipal buildings or impose and collect property taxes with which to hire teachers and administrators. It is they who cannot afford to build municipal buildings or exercise the power of eminent domain to establish parks and recreational areas. These are all routine powers enjoyed by the citizens in counties and towns east of the Rocky Mountains. But they are nearly unknown to counties and local governments in that vast majority of territory within western States. That is the practical consequence of the unconstitutional impingement on the sovereign rights of the States by federal retention of unappropriated land in violation of the Equal Footing Doctrine.

c. The Citizens of the West are Denied the Equal Right to Condemn Property.

The power of eminent domain is a fundamental attribute of state sovereignty. "The taking of private

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[12] *See* Congressional Research Service, *Federal Land Ownership: Overview and Data,* R42346, February 21, 2020. https://crsreports.congress.gov/product/pdf/R/R42346.

property for public use upon just compensation is so often necessary for the proper performance of governmental functions that the power is deemed to be essential to the life of the State." *Georgia v. Chattanooga*, 264 U.S. 472, 480, 44 S. Ct. 369, 370 (1924). The "sovereign power of eminent domain is inherent in government as such, requiring no constitutional recognition and is as indestructible as the State itself." *Adirondack R. Co. v. N.Y. State*, 176 U.S. 335, 346, 20 S. Ct. 460, 464 (1900). Only those lands of the federal government are beyond the reach of the States.

Yet as the map contained in Utah's Appendix 1 makes clear, it is difficult to pursue any project of significance in the western States without touching federally claimed land, which not only dominates the landscape but is also checkerboarded throughout private land ownership. So, unlike the citizens of New York or Virginia, who can levy taxes to fund and create a highway on the most direct and cost-effective route, the western States can neither levy taxes sufficient to construct such a road nor determine its path.

The same issue prevents broadband and high-tension electrical wires being deployed in the western States, leaving western citizens isolated without connectivity, in comparison to their eastern brethren. Likewise, cellular service is non-existent in vast federally controlled areas, where cellular companies must acquire federal permits and leases to erect towers.

d. The Citizens of the West are Denied an Equal Right to Exercise Police Power.

The right of the citizens of States to exercise police powers through their representatives to protect their general welfare is fundamental to American federalism.

> The police power is very broad and far-reaching, and it is difficult, if not impossible, definitely to fix its bounds. It embraces the whole sum of inherent sovereign power which the state possesses, and, within constitutional limitations, may exercise for the promotion of the order, safety, health, morals, and general welfare of the public.

Bowden v. Davis, 205 Or. 421, 433-34, 289 P.2d 1100, 1106 (1955). Because the federal government controls so much of the territory in Western States, the people are unable to exercise these preeminent powers.

The western States in particular struggle with the problem of wildfires. But the federal agencies charged with protecting public lands are crippled by inaction, leading to "catastrophic wildfires, destructive outbreaks of forest insects and diseases, and the continued spread of noxious weeds."[13] Federal agencies lack the flexibility and incentives to meet changing circumstances, and "federal agencies have not made sufficient policy changes or budgetary allocations" to

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13 Federal Lands Task Force Working Group, *Breaking the Gridlock: Federal Land Pilot Projects in Idaho*, December 2000, https://www.idl.idaho.gov/wp-content/uploads/sites/2/land-board/federal-lands/breaking-the-gridlock.pdf, at 15.

carry out the strategy of using more prescribed burns to reduce risk of devastating fires.[14] Constitutionally mandated local ownership would put those with the greatest stake in the outcome in charge of efficiently fashioning solutions.

To describe the scope of the problem, all federal agencies together managing federal lands had a combined FY2018 backlog estimated at $19.38 billion.[15] As a result, citizens of the West are endangered by unmaintained bridges and trails and inconvenienced by unavailable services. At the same time, the States, upon lands they controlled, have taken unparalleled steps to invest in their public lands.

e. The Citizens of Western States are Subjected to Trial without Jury and Federal, Rather than Local, Law Enforcement Policing.

The right to trial by jury is "of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right has always been and should be scrutinized with the utmost care." *SEC v. Jarkesy*, 144 S. Ct. 2117, 2128 (2024) (internal citations omitted). While "Congress may devise novel causes of action involving public rights free from the strictures of the Seventh Amendment…it lacks the power to strip parties contesting matters of private right of their consti-

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14 Kolden, Crystal A. 2019. "We're Not Doing Enough Prescribed Fire in the Western United States to Mitigate Wildfire Risk" *Fire* 2, no. 2: 30. https://doi.org/10.3390/fire2020030.

15 *Ibid*.

tutional right to a trial by jury. *Granfinanciera v. Nordberg*, 492 U.S. 33, 51-52, 109 S. Ct. 2782, 2795 (1989).

Yet these rights vanish when faced with federal agents enforcing rules made without the assent of Western citizens. Armed BLM agents seize cattle accused of illegal grazing and sell it at auction before the owners even grasp the gravity of the situation.[16] Upon written notice of intent to impound (43 CFR § 4150.4-1), five days afterward the BLM can impound "without further notice." 43 CFR § 4150.4-2. They can then auction off the owner's cattle upon notice in writing or personal delivery. 43 CFR § 4150.4-3. The agent making all these determinations is simply the "authorized officer" (43 CFR § 4150.1), which is simply "an employee of the Bureau of Land Management, to whom has been delegated the authority to take action." 43 CFR § 5400.0-5.

BLM preempts State law enforcement[17] and employs their own "Law Enforcement Rangers"—which, in its job postings, it advertises as "resolv[ing] problems on public lands."[18] Like many other federal agencies, recourse comes not from the judicial system promised by the Constitution, but rather an assembly of administrative rules and administrative law judges —second-class justice for second-class citizens.

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16 *Cattle theft, vote are double blows to Western Shoshone land rights*. September 12, 2018. ICT News. https://ictnews.org/archive/cattle-theft-vote-are-double-blows-to-western-shoshone-land-rights.

17 *See, for instance*, *Bureau of Land Management v Ross Babcock*, 32 IBLA 174, 189, 84 Interior Dec. 475 (1977).

18 https://www.blm.gov/careers/careers-in-blm#le

The citizens of the West face not merely the abuses akin to those of George III, but even the ancient ones dispatched by the Magna Carta.

f. The Citizens of the West are Denied the Equal Right to Political Competition.

The Fourteenth Amendment to the Constitution of the United States, Section 2, mandates that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State." Population is therefore the constitutional currency of our federalist system of government. States with greater populations have more say in the electoral college, the House of Representatives, and control the power of the purse.

The western States cannot compete with their eastern siblings in population. With vast portions of the State forever foreclosed to development, the western States are limited in their political clout, unable to fully advocate for their own budget and priorities. Compare, for instance, the vast land area of Texas—ecologically similar to much of the West, but only 1.9% controlled by the federal government, and boasting a large population, diverse and thriving economy, and a suitably large footprint in national politics and ability to drive the national conversation.

IV. The Citizens of the West have no other Political Recourse, as the Means of Redress are Unavailable to Their Politicians.

Due to the comparatively small populations in western States, they lack the political clout to push forward legislation to solve local problems, a scenario unknown to their eastern sisters.

This is precisely the situation contemplated in *Carolene Prods. Co.*, where the prejudice itself, against the citizens of the western States, "tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4, 58 S. Ct. 778, 783 (1938). This Honorable Court's intervention is the mechanism to grant relief to all of its citizens.

CONCLUSION

The citizens of the western States deserve no less power than those in the east. This issue demands the dignity of this Honorable Court to do justice by the citizens, and States of the West. These *Amici* urge this Court to grant the instant motion, invoke its original jurisdiction, and decide an issue of critical constitutional importance.

Respectfully submitted,

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